# The Man of Last Resort

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BY

MELVILLE DAVISSON POST

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THE MAN OF LAST RESORT

THE STRANGE SCHEMES OF
RANDOLPH MASON. . .

# THE MAN OF LAST RESORT

## OR THE CLIENTS OF RANDOLPH MASON

BY

MELVILLE DAVISSON POST

Author of "The Strange Schemes of Randolph Mason"

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## PREFACE

IN this *fin-de-siècle* time, society has grown liberal, it is said, and yet he who thrusts a lever under sage customs, or he who points out the vice of institutions long established, may deem himself happy if he be permitted to strip against the duellist rather than the mob. Even if one come new into the courts of the *literati* with a cloak dyed a different hue from his fellows, he will scarcely have passed the doorway ere the taunting challenge, " Do you fight, my lord ? "

The author, in a previous volume entitled *The Strange Schemes of Randolph Mason*, pointed out certain defects in the criminal law, and demonstrated how the skilful rogue could commit not a few of the higher crimes in such a manner as to render the law powerless to punish him. The suggestion was, it seems,



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considered startling, and the volume has provoked large discussion. A few gentlemen of no inconsiderable legal learning, and certain others to be classified as moral reformers, contended that the book must be dangerous because it explained with great detail how one could murder or steal and escape punishment. If the laws were to be improved, they said, "would it not be more wisely done by influencing a few political leaders?"

While such a criticism does not come from any considerable number of authorities, it has been honestly made and is entitled to consideration.

The vice of it lies, it seems to me, in a failure to grasp the actual nature of our institutions. It is a maxim of our system that the law-making power of the state rests in the first instance with the people of the state. This power, for the purpose of convenience, is delegated to certain selected persons who meet together in order to put into effect the will of the people.

The so-called law-makers are therefore not law-makers at all, in the sense of being origin-

ators of the law; they are rather agents who come up from their respective districts under instructions. Such agents are simply temporary representatives of the citizens of their respective districts, directly responsible to them and charged with no duty other than that of putting their will into effect. The agent or delegate should therefore approach very conservatively any matter upon which the will of his constituency has not been satisfactorily determined. It is, then, apparent that the influence which makes or which alters the law is a force exerted from without. No change in the law can be properly or safely brought about except through the pressure of public sentiment. The need for the law must be first felt by the people and the demand for it made before the legislator is warranted in acting. The representative would otherwise become a presumptive usurper, afflicting the people with statutes for which there was no public demand; and such laws, so improperly obtained, would be without the support of public sentiment and would be liable to repeal.

Hence it is entirely clear that if the existing

law prove to be unjust or defective, the people must be brought to see and appreciate such injustice or inadequacy and to demand the requisite modification.

This contention can, as it seems to me, not be gainsaid. It is respectfully urged that no other method of securing wise changes in the law can be properly pursued under democratic institutions. To hold otherwise is to take issue with the wisdom of democracy itself, and with so rash a champion the writer has no spear to break. Indeed, he makes this explanation with immense unwillingness, as he feels that he should not be required to defend a truth so evident. It is like demonstrating gravely that the earth is round and that sunlight is an energy.

Yet he is advised that attention should be called to this matter, lest the thoughtless condemn upon a hearing *ex-parte*. Indeed, even after the punishment of *la peine forte et dure* is gone out these many hundred years, the good citizen will hardly hold that one guiltless who stands dumb while hidden evils assail. If men about their affairs were passing to and fro

across a great bridge, and one should discover that certain planks in its flooring were defective, would he do ill if he pointed them out to his fellows ? If men labored in the shops and traded in the market confident in the security of their city's wall, and one should perceive that the wall was honeycombed with holes, could he stand dumb and escape the stigma of being a traitor ? The law makes little difference in the degree of moral turpitude between the *suppressio veri* and the *suggestio falsi.* Both are grievous wrongs. The duty of the individual to the state is imperative. He cannot evade it and continue to regard himself as a worthy citizen.

Is there not in all this criticism a faint suggestion of the men who " darken counsel by words without knowledge " ?

Lycurgus taught the laws to the people, Solon taught the laws to the people. The Roman law provided for a final appeal from the consul to the people, and the very essence of republican institutions lies, as has been said, in a recognition of the people as the source of the law-making power. If the law offers im-

perfect security and is capable of revision, the people must be taught in order that they may revise it. If it offers insufficient security and is incapable of revision, then the people must be taught in order that they may protect themselves. This conclusion is irresistible. To counsel otherwise is to share in the odium of that short-sighted ambassador who urged upon Pericles the wisdom of reversing the tablet upon which the law was written in order that the people might not read the decree.

Surely, then, he who points out the vices of the law to the people cannot be said to do evil, unless the law of the land is to be made by a narrow patriciate sitting, like the Areopagus of ancient Athens, with closed doors.

That yesterday in which the enemies of society plied their craft by means of the jimmy and the dark lantern is now almost entirely past. The master rogue has discovered, with immense satisfaction, that the labor of others may be enjoyed, and the results of their labor seized and appropriated to his uses, without thrusting himself within the control of criminal tribunals.

Wise magistrates, laboring for the welfare of the race, have been pleased to write down what should be done and what should not be done, and have called it "law." The citizen, having no time to inquire, has gone about his trade under the impression that these rules were offering ample protection to his person and his property. But the law, being of human device, is imperfect, and in this fag end of the nineteenth century, the evil genius thrusts through and despoils the citizen, and the robbery is all the more easy because the victim sleeps in a consciousness of perfect security.

The writer has undertaken to point out a few of the more evident inadequacies of the law and a few of the simpler methods for evasion that are utilized by the skilful villain. It must be borne in mind, however, that more gigantic and more intricate methods for evading the law and for appropriating the property of the citizen are available. The unwritten records of business ventures and the reports of courts are crowded with the record of huge schemes having for their ultimate purpose the robbery of the citizen. Some of these have been suc-

cessful and some have failed. Enough have brought great fortunes to their daring perpetrators to appal that one who looks on with the welfare of human society at heart.

The reader must bear in mind that the law herein dealt with is the law as it is administered in the legal forms of his country, in no degree changed and in no degree colored by the imagination of the author. Every legal statement represents an established principle, thoroughly analyzed by the courts of last resort. There can be no question as to the probable truth of these legal conclusions. They are as certainly established as it is possible for the decisions of courts to establish any principle of law.

The reader is reminded that the schemes of skilled plotters, resorted to for the purpose of defeating the spirit of the law, are, for the most part, too elaborate and too intricate to be made the subject of popular discussion. An attempt to explain to the but half-interested layman plots of this character would be as vain as an attempt to demonstrate an abstract problem in analytical mechanics. The knaves

who have been pleased to devote their energies and their capacities to problems of this nature are experts learned and capable, and against these the average man of affairs can defend himself but poorly. He may be warned, however, and the author will have accomplished his purpose if he succeeds in identifying the black flag of such pirate crafts.

In the present volume he has deemed it wise to continue to utilize as his central figure the lawyer, Randolph Mason,—a rather mysterious legal misanthrope, having no sense of moral obligation, but learned in the law, who by virtue of the strange tilt of his mind is pleased to strive with the difficulties of his clients as though they were mere problems involving no matter of right or equity or common justice.

This emotionless counsellor has already been introduced to the public. He has been described as a man in the middle forties. "Tall and reasonably broad across the shoulders; muscular, without being either stout or lean. His hair was thin and of a brown color, with erratic streaks of gray. His forehead was broad and high and of a faint reddish color.

His eyes were restless, inky black, and not over-large. The nose was big and muscular and bowed. The eyebrows were black and heavy, almost bushy. There were heavy furrows, running from the nose downward and outward to the corners of the mouth. The mouth was straight, and the jaw was heavy and square.

"Looking at the face of Randolph Mason from above, the expression in repose was crafty and cynical; viewed from below upward, it was savage and vindictive, almost brutal; while from the front, if looked squarely in the face, the stranger was fascinated by the animation of the man, and at once concluded that his expression was at the same time sneering and fearless. He was evidently of Southern extraction and a man of unusual power."

This counsellor, keen, powerful, and yet devoid of any sense of moral obligation, is possessed of this one idea—that the difficulties of men are problems and that he can solve them; that the law, being of human origin, can be evaded; that its servants, being but men like the others, may be balked, and thwarted

and baffled in their efforts at a proper administration of this law.

It is the age of the able rogue, and, in examining his rascally schemes, the writer has finally come to believe that the ancient maxim, which declares that the law will always find a remedy for a wrong, is, in this present time of hasty legislation, not to be accepted as trustworthy.

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# THE
# GOVERNOR'S MACHINE

(See the learned opinion of Mr. Justice Matthews in the case of Irwin *vs.* Williar, 110 U. S. Reports, 499; the case of Waugh *vs.* Beck, 114 Pa. State, 422; also Williamson *vs.* Baley, 78 Mo., 636; 15 B. Monroe, Ky. Reports, 138. See also, in Virginia, the case of Machir *vs.* Moore, 2 Grat., 258.)

# THE GOVERNOR'S MACHINE

## I

THERE was something on the Governor's mind, and when this condition obtained, interesting events had usually followed in the far Southwest. This highly mystic mental status had preceded the efforts of a Federal Court to compel him to act under a mandamus, and the result was history. It had preceded a memorable conflict between the legislature at large and His Excellency, the Governor, also at large, and immediately thereafter a certain statute had sprung into existence prohibiting the massing of State troops within one hundred miles of the Capitol during the sitting of the Solons of the Commonwealth; but it was

a law after the fact. It had preceded also the mercurial efforts of the so-called patriotic orders to impeach the Executive for malfeasance, misfeasance, and nonfeasance,—an effort that had brought to its instigators only a lurid and inglorious rout.

The Governor was standing at the eastern window of his private office looking out at the monotonous brown tablelands stretching away to the foothills of the blue mountains that marked the outer limits of his jurisdiction. He was a young man, this Governor, with the firm, straight figure of a soldier and the gracious bearing of important ancestry. His eyes were brown, and his hair and Van Dyke beard were brown also—all indicative, say the sages, of precisely what the Governor was not. He was perfectly groomed. Every morning when he walked down to the State-house he was the marvel and the fastidious spotless idol of the far Southwest.

One would have imagined that this handsome fellow had just stepped out from a smart New York club, could he have forgotten that such an institution was almost a continent to

eastward. The Governor had maintained that it was quite possible to live as a gentleman should wherever Providence had provided Chinamen and water, and that the matter was not entirely hopeless if the Chinamen were not to be had, so the water remained.

It was true indeed that the Executive had maintained his customs with no little pain against the divers protests of gods and men, ofttimes wrought in silence, but not infrequently urged fiercely in the open. But the Governor was not one with whom meddling folk could trifle and preserve the peace. This fact certain bad men had learned to their hurt west of the Gila, and divers evil-disposed persons regretted and were buried, and regretted and remembered south of the Pecos. So that in time this matter came to be regarded as a peculiarity, and passed into common respect as is the way with the peculiarities of those expeditious spirits who shoot first and explain afterwards.

The Governor was aroused from his reverie by his private secretary who came in at this moment from the outer office.

" Governor," said the young man, " there is a strike at the Big Injin."

" Well," replied the Executive, " telegraph the sheriff."

" But," said the Secretary, " the sheriff has just telegraphed us."

" Then," continued the Executive, " send a courier to Colonel Shiraf."

" But Colonel Shiraf is out on the Ten Mile."

" In that case," said the Governor, " you must go up to the mines, and if the dignity of the Commonwealth needs to be maintained, you will maintain it, Dave. You should find some troops at the post, some herders at the cattle ranch, and a very large proportion of the State Guards, by this time quite drunk, at a horse fair in Garfield County. If they are required, notify me."

As the secretary turned to leave the room, the Governor called him back. " Dave, my boy," he said, " peace in this Commonwealth is a sacred thing—a superlatively sacred thing, so sacred that we are going to have it if thereby the word ' census ' becomes a meaningless

term; and remember, my boy, that the State is very expeditious."

The secretary went out and closed the door behind him, while His Excellency, Alfred Capland Randal, forgetting the report, turned back to the window. The air from the great brown plain came up dry and hot; above the blue mountains the sun looked like a splotch of bloody red, and over it all brooded the monotonous—the almost hopeless silence of the far Southwest.

The something on the Governor's mind was a something of grave import, for which he could evidently find no solution, and presently he began to pace the length of his private office with long strides, and with his hands thrust deep into his pockets.

Suddenly the door opened and a Chinaman entered with a telegram. The Governor looked up sharply, and taking the envelope tore it open with evident unconcern. When his eyes ran over the message he drew in a deep breath, and, seating himself at a table, spread out the paper before him. This was the advent of the unexpected, for which Mr. Randal was not

quite prepared, and this his manner exhibited to such a degree that the stolid Celestial wondered vaguely what was up with the big foreign devil.

"Our train stops at El Paso," ran the telegram, "you will come up, won't you?—M. L."

The Governor stroked his Van Dyke beard, and the fine lines came out on his face. "Of all times," he muttered. Then he turned to the Chinaman. "Have my overcoat at the depot at six. I am going to El Paso, and shall not return until late."

The Chinaman vanished, and the Executive crushed the telegram in his hands, thrust it into his pocket, and resumed his march up and down the private office.

This Governor was the crowning achievement of a machine. He was the elder son of an ancient family in Massachusetts, and had been reared and educated in an atmosphere of culture. It had been the intention of his family to have him succeed his father with the practice of the law, but the plans of men are subject to innumerable perils, and it soon developed that young Mr. Randal was not at

all adapted to the duties of a barrister. Indeed it was very early apparent that nature had intended this man for the precarious vagaries of a public life. He was magnetic, generous, with a splendid presence, and the careless, speculative spirit of a gambler. In truth, Alfred Capland Randal was a politician *per se*. While in college he had been a restless element, injecting the principles of practical policy into everything he touched, from the Greek-letter fraternities to the examinations in Tacitus, and all with such reckless, jovial abandon that divers sage members of the faculty speculated with much wonder as to which particular penal institution would be his ultimate domicile.

At times the elder Randal had been summoned to attend these grave sittings of the faculty, and straightway thereafter the rigid New England lawyer had lectured his son at great length and with bitter invective, to which the young man attended in a fashion that was amiable, and immediately disregarded in a fashion that was equally amiable. Thus in the Puritanic bosom of the father the conclu-

sion grew and fattened and matured that the eldest scion of his house was an entirely worthless scapegrace, while the son was quite as certain that his father was a very sincere, but an entirely misguided old gentleman.

The result of these divergent opinions was that on a certain June evening young Randal sat down upon a bench in the park of his father's country place with the express purpose of planning his career. Out of the confidence of youth he determined upon two ultimate results. One was, of course, wealth, and the other was an elaborate and entirely proper wedding ceremony with a certain Miss Marion Lanmar. This young lady, Randal had met at a football game at Harvard, and afterward in New York, where she resided with her aunt, Mrs. Hester Beaufort.

The gigantic confidence of youth is certainly a matter of sublime wonder to the gods. One at all familiar with the ways of things would have at once pronounced both results quite impossible to the improvident young man. But from the standpoint of exuberant youth there seemed to be no important obstacles except

the possible delay, and this was not very material, as the world was young and these were things to be had in the farther future.

For the present, Randal determined to organize a political machine and transport it into one of the remote Western States. The East offered no theatre for his talents; it was closely organized; its political machinery was too strong for him to hope to oppose it. He would be crushed out in the first skirmish.

Nor could he hope for early recognition by allying himself to any one of the established organizations. These were crowded with deserving men, and besides, he had no intention of serving as a political apprentice. He had ability, he believed, as a political strategist, and he proposed to operate free and untrammelled in a big, breezy arena.

Having determined upon a course, young Randal at once proceeded to put it into operation. He held a council of war at the Plaza on Fifth Avenue with two of his college associates, a stranded gambler, called for convenience "Billy the Plunger," and an old Virginia gentleman named Major Culverson. The

council sat in secret session for three days, and the result was that the machine moved out into the Commonwealth of Idaho, and began to operate. But the manners and customs of the West were varied and mystic, and with the following summer the machine, badly shaken, moved over into Nevada. Here, at Tulasco, on the Central Pacific Railroad, the first college man deserted and, helped by his father, returned with great penitence to the civilized East.

The machine passed on across the Humbolt River and proceeded to attempt to shape the political destinies of Nevada. But disaster was following in its wake, and, after an active and turbulent but quite unprofitable career of a few months, it moved southward, battered and beaten, but unconquered.

On the night of the third of October, the machine tramped into Hackberry, on the Southern Pacific, and while men slept, the second college man, concealing himself in a freight car, set out for the Atlantic coast, cursing with lurid language all that part of the continent lying west of the Mississippi.

On the following morning the machine held its second great council, but this time it sat in desperate conclave above the Cow-Punchers' Saloon in the town of Hackberry, facing a condition and not a theory. But three members remained—Randal, the dauntless Culverson, and Billy the Plunger.

The gambler was for organizing a faro bank, and working the towns down the Gila, but as the bank had no funds, and the death rate usually attendant upon such ventures in this primitive country was enormous, his plan was held impracticable, and at four o'clock in the afternoon he ceased to urge the wisdom of his scheme, and after having announced with great solemnity that he was game to any limit the gang wanted, he lapsed into the capacity of a spectator.

The Major advised moving south into Mexico, but as he seemed to have no definite idea of what should be done when Mexico was reached, and it finally appearing that moving south was simply a fad with Culverson, the plan was likewise abandoned.

Young Randal, fired by his unabated pur-

pose, urged the wisdom of trying a round with the political fortunes of Arizona, but it was demonstrated that he was considering a major venture, having for its object huge honor, while at present there was crying need for some minor venture that would probably result in the necessaries of life and a few hundred dollars. Accordingly, at three o'clock in the morning, the machine decided to assume, for a time, the vocation of the cattle herder, and accept employment with a certain stock king of New Mexico.

It was understood, however, that this digression should be temporary, and should be abandoned just as soon as the machine should feel able to resume its original purpose. It was at this point in the deliberations of the conclave that Major Culverson made his famous statement, to wit, that the gates of hell could not ultimately prevail against a political machine composed of a Massachusetts Yankee, a dead-game sport, and an old Virginia gentleman.

From this time forth the career of Randal's machine was a concatenation of fortunes and

misfortunes, principally the latter, quite incredible. But the three men clung together, and a single enthusiastic purpose is a marvellous motor power, so that when Fate finally lent a helping hand, the machine became a something of importance in the affairs of a Southwestern Commonwealth. Once on the upward way, the ability of Randal and the daring energies of his associates carried it forward with great strides, so great that on the evening of the day with which this history has to do, the Massachusetts Yankee was the Governor of a State, the Major was Auditor, and Billy the Plunger, now known by his signature as Ambercrombie Hergan, was Secretary of State.

The sun had gone downward from sight behind the far mountains, now changed from blue to a murky gray. The Governor, recalled to a sense of the hour, closed his mahogany desk, locked the door of his private office, and walked leisurely out through the State-house. As he passed down the steps of the Capitol he met the Auditor coming up.

"How are you, Al?" said the Auditor.

"Charmed," replied the Governor.

"Ah," said the Major, with great ceremony, "you may be charmed, sir, but to me, sir, your face wears the haunted look of one who holds three nines against what he strongly suspects to be a pat hand."

"Sage," said the Governor, bowing, "I tremble for my hidden thoughts."

"You 're a fool," said the Major, stepping up beside the Executive. "I want to know where you are going."

"I!" said the Governor, "I am going to the southeast. Do you see that little railroad? I am even now about to commit myself to its irresponsible mercies."

"You must not go, Al," continued the Auditor. "Attend, I will nominate the reasons. First, there is a julep party at my palatial residence."

"Insufficient," said the Governor.

"Second, there is a strike at the Big Injin."

"Insufficient," said the Governor.

"And third," continued the Auditor, lowering his voice, "Honorable Ambercrombie Hergan is at this very hour in the second room of

Crawley's Emporium, playing the taxes of Bolas County, and losing them, sir, losing them."

The Governor's face grew hard, and his remarks for a moment were quite unprintable. Then he turned to the Auditor.

"Ned," he continued, "you must get him out, and take him up to my residence. I will be here by ten o'clock. I am compelled to go to El Paso. I can't get out of it. I am compelled to go."

"Compelled?" ejaculated the Major, "who, in the name of all the living gods, is compelling you? He must be greater than the railroads, greater than the legislature, greater than the Federal Court. Compelling the Honorable Alfred Capland Randal? Shade of the blooming Witch of Endor!"

"Ned," said the Governor slowly, "I will explain it all just as soon as I can. In the meantime you must help me. You must get him out. Won't you, Ned?"

The Governor put his hand on the Auditor's shoulder, just as he had done a thousand times before when he needed the help of this unusual

man. And, just as he had done a thousand times before, the Major declared that the Executive was a "damned rascal" and a "no account youngster," and that he would not do it, when all the time he knew deep down in his heart that he loved this straight young fellow better than any other thing in the world, and that presently he was going to do exactly what he said he would not do.

The Governor knew this also, for he ran down the steps without stopping to interrupt the amiable flow of the Auditor's depreciatory remarks.

At the depot he found the Chinaman, Bumgarner, waiting with his coat.

That such a primitive Celestial should be saddled with such a name arose entirely from the pious instincts of the Major. It happened that the Virginian was standing in a crowd at the corner near Crawley's Emporium when the Chinaman first appeared, having tramped from the coast. The Major, who was slightly in his cups, called the Chinaman over to the corner, and inquired by what appellation he was known, to which the foreigner responded that

he was called Fu Lun. "Fu Lun!" shouted the Major, fiercely, "a name smacking of the devil, and not to be tolerated in a Christian State." And then turning to the crowd, "Gentlemen," he continued, "behold! I do a goodly missionary work. I rebuke the evil spirit dwelling in the bosom of this heathen. I give it a Christian name. I name it Bumgarner."

Thus the first evidence of civilization fastened upon the Celestial, and, as the Major's mandate was not to be disregarded, as "Bumgarner" the Chinaman had gone.

The journey to El Paso was not an idle one for the Governor. In a very short time he should be in the presence of Miss Marion Lanmar and her aunt Mrs. Beaufort, and, of all times since their first eventful meeting, this was the very time he was not prepared for an interview. Prior to the notable exodus of the machine to Idaho, Randal had called upon Miss Lanmar, who was at that time a very young woman in college. The two were quite important, quite enthusiastic, and pitiably ignorant of the world's ways.

This last meeting to them seemed big with fate, and was dramatic to the limit of a play-actor's rehearsal. Youth lent to it all the glamour of romance. To Miss Lanmar young Randal was her chivalrous knight-errant, on the eve of his departure into a wild and unknown land full of mysterious peril, in quest of wealth and fair fame, all for her. To Randal she was the Lily Maid of Astolat, whom it was fate that he should worship with noble deeds until he won. It was all in strict accord with romantic custom in such cases made and provided, and terminated quite in keeping with the ideal conventions.

When the door had closed upon the handsome young fellow whom Miss Marion Lanmar had promised to love for ever more, that young lady remained standing motionless by the mantel shelf, her face very white, and her heart very desperate and very true. To the dainty Miss Lanmar it was all very real, and by no means the pretty little comedy which the world out of its practical wisdom would have known it to be.

To Mr. Alfred Randal, as he passed down

the steps of Mrs. Beaufort's residence on the avenue, the world was now a vast arena, into which he was going, armed and knighted with his lady's colors on his helm. His heart beat high in his bosom. He would be a factor in great affairs; the hour would come when he would return, famous, wealthy past belief, announced by the heralds. He could not know that he was but another character in that sweet old fairy story which men and women have striven to act over and over again before they learn with dumb horror how pitiless and how practical are the ways of Providence.

Yet the wise man who accompanies the youth to the gateway of the arena will not say: "To-morrow Circumstance will beat you from your horse and tramp you under, and instead of returning victor, you will return a cripple." Although the wise man knows full well that of all results this latter is most probable, yet he will not say it, because the enthusiasm of youth is a marvellous power, difficult to estimate, and what it may accomplish no man can tell.

The Governor had not seen this young woman after that night, but he had clung to

his intention with the determination of a man who has a single object in life. An intermittent correspondence had been maintained, but after years this intention to wed Miss Lanmar had become rather an ideal something, and in this there was peril. But a few weeks before, he had intimated vaguely, that he was now a person of some local importance, and with no inconsiderable prospects of wealth, and to this Miss Lanmar had intimated quite as vaguely that she was waiting. But in it all there seemed to be a powerful, albeit somewhat indistinct doubt. Years had passed, and years had a way of working frightful changes in people. The Miss Lanmar of to-day could not be the school-girl whom he had known.

The Executive leaned back in a seat of the stuffy little coach and speculated with grave concern. At any rate, this alliance was now quite impossible. Complications had been thrust in; a duty, or what he conceived to be a duty, had sprung up, and this duty it was not his intention to evade.

## II

THE Governor walked gravely down the long platform at El Paso, looking up at the windows of the Pullmans, wondering, rather indistinctly, how he should be able to recognize the irridescent princess of his romantic youth. A negro porter touched him on the arm and inquired if he was Governor Randal. The Executive replied that he was, whereupon the negro with much profound obeisance announced that Miss Lanmar was waiting in the drawing-room of the opposite Pullman.

The Governor sprang up the steps of the coach. As he entered, a young woman, wearing a dark travelling dress, came forward to meet him. She was of medium height, with heavy brown hair, fine eyes, arched brows, and quite a faultless nose. But the great charm of the woman was her splendid bearing, and her instinctive culture.

Just how this meeting began Alfred Randal could never afterwards quite recall. He could remember in vivid details the first picture of this superb woman as she arose to greet him, but then, just then, the love of his youth that had seemed to sleep under an anæsthetic for so many years, suddenly woke into glorious life, and gushed into his heart and overran his senses with its marvellous vitality. What transpired thereafter was provokingly indistinct. He remembered being presented to the aunt, Mrs. Beaufort, and her astonishment, and her incredulous query as to whether he lived in this "terrible country" to which he had replied that he could not be said to live, but that it was his part to exist in this rather primitive land. He remembered that the three sat together in the drawing-room of the coach and talked of his return to New York, of his ultimate success, and his assured future. He remembered also that for the time he had forgotten the grave difficulty in the way of such a future and his stern decision made but a few minutes before. He remembered also that through it all he had been very foolish and

very confident and idiotically happy, and how at the parting he had kissed Miss Lanmar's hand and blushed like a school-girl, and then jumped down from the moving train at the peril of his life.

The Governor stood upon the platform and watched the great train as it thundered away in the distance. The interview which had just ended, although a thing apparently unreal, had swept him out from under the influence of an illusion that had served to make his life in the great Southwest bearable, even happy. From this time forth it could never be what it had been. The man felt like one who, having been so long a captive in a dungeon that he was half content, and his memories of the world had become vague and unreal, is suddenly and without warning lifted into the sunshine of the great glorious world and held there until his heart is filled to drunkenness with the beauty of it all, and then, ruthlessly and on the instant, is thrust back into the rayless gloom of his dungeon.

Randal stood for a time looking at the rows of dim lights scattered about the station like

dismal fireflies. Then he crossed to the freight train upon which he was to return and climbed up into the cab with the driver.

"What time shall we get in?" he asked.

"By the top of the night, Governor, if we have luck," answered the driver, pulling open the throttle.

The engine snorted and pounded along in the dark like some huge beast. The Governor sat in the cab window and looked out. The night air was sweet and cool, his face was hot. Two hours before he had decided what he should do, and dismissed the matter; but new and powerful elements had arisen and ordered him to rehear and decide anew.

Ambercrombie Hergan had lost and wasted the money of the State. There was now a deficit in his accounts of some fifty thousand dollars. There was no way by which this loss could be met unless Randal should pay it, and to do this would take everything he had on earth. It would mean the sacrifice of his mining stock, which, if held, promised great returns. It would be ruin, utter ruin, to make good the loss; yet the gambler, although a

gambler, was his friend, and two hours before he had not hesitated at all.

Motives, mighty, selfish motives, which until this hour he had beaten back, now leaped up, clamoring to be heard, howling for time against his decision, time to show the right of their cause, the wisdom of it, the ultimate justice of it. Something asked him roughly what right had he to jeopardize the future of this woman who loved him. What right had he to deceive, to sacrifice her? Who was Hergan that he should be considered against this woman? Who, but a reckless and improvident adventurer? It was not his own happiness urged the something; that would be a matter of little moment. It was the happiness of another, and that other was true, innocent of wrong, superlatively just. What contrast could be drawn between the woman and this gambler? Duty? What duty could he owe to the irresponsible Hergan that could approach in the slightest part the measure of the duty which he owed to the woman who had trusted him for so many years, and waited, and loved him?

Yet against all this, certain pictures came up

from the past,—vivid, proclaiming a mighty truth, a truth which the man knew and acknowledged in his heart, the truth that if these positions were reversed, Hergan, gambler though he was, would not hesitate for a moment. Had he hesitated that morning in the Rio Grande when Randal's horse had fallen and was being swept down with the current, carrying his master under him, tangled in the stirrup strap? Had he hesitated when it became necessary deliberately to steal and burn the bogus ballots in Garfield County, when to do so seemed little less than deliberate suicide? Had he hesitated that terrible day on the Rio Sonora, when there was no time for warning, but time only to spring forward and take the knife in his shoulder? Had this man ever hesitated when the welfare of Randal was at stake? Would he not gladly, and without comment, give up his life to-morrow if the Governor should ask it of him?

The Governor passed his hand across his forehead and closed his eyes. When he opened them he had decided, and against this second decision there should be now no appeal and no rehearing.

## III

THE Secretary of State was far removed from the ordinary. He was one of those not infrequent persons whom men are quite unable to classify. At times he arose far beyond the limits set for him by his associates, and at times he dropped far below. There was about the man a sort of indefinite reserve that impressed his fellows and inspired confidence in those positions requiring rash and apparently impracticable moves. Ordinarily, in commonplace affairs, his judgment was not considered sound, or even valuable, and at such times no one would have thought for a moment of advising with this man. It was only when sound common-sense could see no way out that the machine appealed to Hergan, and at such times he came forward with some freak venture which was frightfully perilous and never ordinary, and never quite a failure.

Success, usually arose, however, not from the ultimate wisdom of Hergan's plans, but from the fact that his unique move would throw the affair into a sort of convulsion resulting in a new situation, and this new situation the sound judgment of his fellows would usually be able to control. The counsel of Ambercrombie Hergan was a protean agent.

The grave vice in the character of the Secretary of State lay in the fact that he possessed no idea of perspective. He would wager his last dollar with the same joyous unconcern with which he had wagered his first, and he would have staked the entire Southwest, if he possessed it, as readily as a Mexican peso, upon the turn of a card or the result of a horse race. As to the antecedents of the Honorable Ambercrombie Hergan, even conjecture was silent. He had come up from a mysterious substratum of New York,—for what, and by reason of what, no man inquired. This mighty new land traced no records and propounded no questions. The arena stood open with its doors thrown back. Any combatant who pleased could enter. Heralded or unheralded,

it mattered not. Good or bad, learned or ignorant, of yokel blood or princely lineage, it mattered not. If he were fittest, he could win.

From this organic defect of his mental build, and not from evil animus, had resulted the sad state of the Secretary's accounts. He had never entirely appreciated the important distinction between his own money and that which belonged to the Commonwealth. He had been thoughtless, reckless, unconcerned, until now he was hopelessly involved. Yet even at this stage when his term of office was fast drawing to a close, he failed to appreciate the gravity of his position, and treated the matter with good-natured unconcern, as of no moment.

The Auditor and Secretary of State sat together in the Governor's library awaiting his return. In appearance the Auditor was a muscular little man of most marvellous vitality, with a fierce white mustache, and a fund of quaint oaths and semi-dramatic phrases hugely expressive and at times artistic ; while the Honorable Ambercrombie Hergan was very tall and very broad, with a shock of heavy black

hair, wide jaws, and a big crooked nose. Far back in his youth this nose had been straight, but one night, in a barroom on the Bowery, a difference of opinion had arisen over some inconsequential matter, and thereafter the gambler's nose had assumed a contour not contemplated in the original design.

The Major was talking, and pounding the table vigorously, when the Chinese servant entered with a tray and some glasses. The Virginian drew himself up and stepped back from the table.

"Well, Bumgarner," he said, "I hail your resurrection; I glory in your return to life. You have been dead no inconsiderable period, sir."

The Chinaman replied that he had been engaged in a laborious but unsuccessful hunt for the bottle of Angostura bitters.

"Angostura bitters?" cried the Major, "marvellous, inscrutable heathen! Will you deign to reveal your reason for requiring the Angostura bitters?"

The Celestial responded that he presumed bitters was an element requisite to the rather

mysterious drink which he had been requested to compound.

"Hear him, hear him!" thundered the Major, as though addressing some present but invisible avenging demon; "hear the vandal! Bitters in a julep! Mighty, intelligent shade of Simple Simon! Attend and observe the idiocy of this savage!" Then he crossed to the astonished Chinaman and took him gently by the collar.

"Bumgarner," he said softly, "you are a frightful example of man's neglect. You have been trained by a Massachusetts Yankee. Ergo, your lack of knowledge is sublime. Bitters you might put in a plebeian gin fizz, and be happy thereafter. Bitters you might put in a high ball of whiskey, and live thereafter. But bitters in a julep, *magnum sacrum!* the gods would crush you! Bumgarner, you are an awful throbbing error, and you have had a providential escape from death. Now," continued the Major, seizing the Chinaman by the shoulder and turning him toward the door, "you may depart, and burn a few joss sticks, and ponder upon my remarks."

The almond-eyed Celestial vanished, wondering vaguely if it had not been better to remain in San Francisco and laundry shirts in a cellar than to attempt to cater to the depraved taste of such incomprehensible foreign devils.

"Now, Bill," continued the Major, seating himself at the table, "I want to know what you are going to do."

"About what?" asked the gambler.

"About this money which you owe the State," said the Major. "Do you realize, sir, that our stand in the Southwest is just about closing, and that we have got to square up and pull out?"

"I reckon so," replied the gambler, as though it were a matter of no importance.

"You reckon so! You irresponsible truck horse! You reckon so!" snorted the Major. "You will cease to indulge in the dainty pastime of speculation when you get a log-chain on your leg and a striped suit on your back."

The Secretary of State laughed. "Something will turn up," he said.

"Ambercrombie Hergan," said the Major, pounding the table with his hand, "for a

broken, a branded, a long-suffering cow pony of Satan, you have the blindest, most stupendous Presbyterian faith in Providence of any white creature ambling south of the Central Pacific Railroad; but you 're sweetening on a bluff this hand, and I am going to call you."

The gambler's face grew serious. "What are you prodding for, Ned?" he asked.

The Auditor leaned forward on the table. "You are planning to slide out," he said, "and it don't go."

"Would it hurt you or Al?" asked the gambler anxiously.

The Auditor reached over and placed his hand on Hergan's arm. "It would not hurt me," he continued, "and it would be no bones if it did, but it would hurt the boy, and he must not be hurt. Don't you know that the moment you are gone, Randal will sacrifice everything he possesses and pay up the deficit? And that would ruin him."

The gambler's face lengthened. "I had not thought about that," he said slowly, "but you are right, he would do that. He is that sort of a man. I have been a fool, an infernal

fool, but I did not think about the boy getting hurt, not once." The man shut his teeth tight together and the big muscles swelled out on his jaws.

The Auditor sat and watched the man across the table from him, and admired his iron nerve in the terrible struggle to decide between himself and the welfare of his friend. The man was evidently suffering. His face showed it plainly; the battle must be a bitter one. The Auditor wondered how it would result. He pitied the man, and in spite of all, half hoped that he would decide to save himself.

Presently the gambler turned slowly and lifted his face, white, haggard, ten years older than he had been an hour before.

"I don't see how to keep him from doing it," he muttered; "I don't see how."

The Auditor started. This man had not been thinking of himself at all.

"You see," continued Hergan. "I am about fifty thousand short, and there is no way to raise that much money,—no way in God's world. If I slide over the Rio, Al will pay it to keep them from extraditing me; and if I

stay here, he will pay it to keep them from sending me to the Pen. It 's the devil's own trap, and works both ways."

"Who got the money, Bill?" asked the Auditor.

"Crawley, and old Martin, of the Golden Horn Mining Company. Crawley got most of it."

"A plague of fat old gamblers," said the Major, solemnly; "they are both as rich as they are mean, and as mean as they are crooked."

At this moment the door opened and the Governor entered.

## IV

THE Executive stopped for a moment and scrutinized his visitors quizzically; then he laughed. "May I inquire, gentlemen, whence arises this gloom?"

The Auditor bowed low. "Good sir," he said, "your Excellency fails to distinguish between gloom and the gravity of sages."

"If the funereal," replied the Governor, "be a *sine qua non* of the converse of the wise, then there has been here this night great cause for envy on the part of Solomon, the Son of David, King of Israel; for such gloom I have not met with in a world of evil days."

"And, sir," responded the Auditor, waving his hand like a barbaric king, "if absence of respect for the dignity of the thoughtful be a symptom of organic mental defect, then there is now here, in truth, great cause for envy upon the part of Wamba, the Son of Witless,

the Son of Weatherbrain. For such amiable impudence is marvellous to contemplate."

"Boys," said the gambler rising, "if you will kindly come down out of the clouds, I will be much obliged to you both, because I have got something to say, and this is just as good a time to say it as any."

The Auditor resumed his seat at the table. The Governor took up a chair, moved it back deliberately into the shadow of the room and sat down.

"It is like this," continued the gambler, "we three have stood in for a long time, and I guess we know each other pretty well. We did n't take no oath to stand by each other when we started, but I reckon that is what we calculated to do. Anyway that is what we did do. If we had n't a done it, we would n't have been deuce high in this Southwest. I did n't have no faith in Al's machine when it started; I thought it was a wild goose chase, but I did n't say nothing, because I had nothing to lose. I was broke, and anything coming my way was pure velvet, so I joined in and come out here.

" Since that time we have had our ups and downs, if God's creatures ever had 'em. We have lied a lot, and we 've stole some, and we 've starved most of the time, and we have been poor and miserable and broke, but we have played fair with each other, and we have never stacked the pack nor dealt from the bottom. Then, one day, the luck turned and we won out through the roof, just like it always does if you stay long enough and keep doubling the bet. You two were elected, and Al appointed me.

" I reckon none of us are going to forget the hell that appointment raised. They said I was an ignorant understrapper, a short-card gambler, and a leary element; and it was true, every blooming word of it Then the newspapers pitched into Al; they said that it was to be hoped that the new Governor would now have ' the moral courage to at least suppress the shady member of his machine '—them are the very words; I 'll never forget 'em, and they meant me.

" I guess I went to you boys, and told you I had better keep out, but I reckon I did n't

put up a very stiff case, because I was hot at the row. I would n't have cared if the howlers had been better men than I was, but I knew they were all just the same kind of cattle—unbranded, straggling steers, gathered up from anywhere but a good place. As for being shady, there was n't a man between the Gila and the Pecos white enough to pass an Eastern grand jury, and as for being a gambler, there was n't a mother's son of the batch that would n't have coppered his soul on a black jack if the bank would have cashed it for a dollar."

Hergan paused for a moment and looked at the Auditor. Then he added, " Exceptin' of course, you and Al."

" Then," the gambler went on: " I guess Al got mad. He made a little speech; we was all there, and it was mighty good talk to hear. He said there had n't been no ' invidious distinctions '—them were his words,—during all the years when nothing had come our way but just one dose of bad luck after another until we reckoned there was n't no God at all,—least ways, if there was any, that He did n't operate

south of the Central Pacific Railroad, and now when we had finally landed on our feet, there was n't going to be no ' invidious distinctions.' I am bound to say that it seemed mighty good to hear Al talk like he did, and I went ahead and let him appoint me."

The Secretary of State moved a little nearer to the table, and an almost imperceptible shadow flitted across his face. " All the time," he continued, " I knowed it was wrong. I knowed that what the mudslingers were sayin' was gospel. I knowed that I was n't fit for the job no more than a Chinaman is fit for a pope. I knowed that the gambler in me was ground in, and the other was just only rubbed on the outside, and that the gambler part was going to run things,—and it did."

The man paused for a moment and turned to the Governor. " Now," he said, " I have come to the point, and it 's this: I got into this hole and I am going to get out of it; it 's my game now; I am not going to stand any side bets. You have both got to promise me right here that you will keep your hands off this matter,—clear off—unless I say it goes."

The gambler stopped, rested his arms heavily on the table and looked at his companions. The Virginian and the Executive were silent; both men realized fully the true import of Hergan's demand. He was seeking to prevent any sacrifice on their part; that was all, and if he had been the most skilful diplomat in the world, he could not have moved more adroitly.

The Governor looked up at the massive face of the gambler, marred by evil circumstance and the riot of dissipation, and wondered—as he had wondered many a time before,—at the splendid unselfishness of this man. From whence could have come this flower of nobility? The life of Ambercrombie Hergan had been sterile soil indeed for such a plant as this. How could it be in the economy of men that such princely fidelity obtained alone even without trace of the common attendant virtues?

For the obligations of the law Ambercrombie Hergan had no regard. For the obligations of the citizen he had no regard. Even for the common obligations of morality he maintained the most stolid unconcern. Honesty was a name to him, and right and duty and honor

were merely names to him. Yet blooming in the barren garden of this gambler's heart was something fairer than them all.

"Well," asked Hergan, with a trace of anxiety in his voice, "are you going to promise?"

The Governor arose. "This is a very serious matter," he said slowly; "we must be given a few minutes in which to decide."

"That 's fair enough," replied the gambler. "You two can go into the other room. I 'll wait."

The Auditor and the Executive retired, and the Secretary of State resumed his seat beside the table, the suggestion of a smile on his face. He knew perfectly that if he could secure the promise of his companions it would be maintained inviolate.

Presently the door opened and the two men entered. "Bill," said the Governor, "we promise."

The gambler arose, and stretched his long limbs like one relieved from the weight of a crushing burden. Then he turned to his companions. "Boys," he said almost gaily, "I

may as well tell you now that I am going to New York Saturday night."

"And I may add," responded the Governor, "that I am going Friday night."

## V

"YOU see," the Governor was saying, "the failure of this bank in San Francisco has wiped out every penny I had in the world. On the fourth day of next March I will be poorer than the ordinary drayman. So poor that I must begin all over again, and I have no heart to do it."

Miss Marion Lanmar was silent. Her hands rested upon the great arms of the chair in which she was seated. Her face might have been a cast; it was so very motionless.

"I should not mind if it were not for you," the young man went on. "I mean,"—he hesitated for a moment,—"if I had never seen you; if I had never known you. But now the effort would seem so miserably inadequate, if it were not made for you. I have loved you and lived for you too long. I have grown accustomed to you as the mighty incentive. Every

path that I have travelled has had you waiting at the end. Every battle I have fought has seemed to hold your happiness in its balance. Even the meagre gains of all the weary commonplace days have been to me so much or so little added to the kingdom of the queen. So I could have gone on to the end, but now, without you I have no heart at all."

The man leaned over and rested his arm on the mantel-shelf. "I have read somewhere," he continued, "how the evil fiend strove to destroy a man whom he hated; how he robbed him of his wealth, of his friends, of his fair fame, and how the man worked on, laughing in the demon's face, and how it all failed, until one morning the evil fiend reached down into the man's heart and plucked the motive out of his life, and then the man threw away his tools and came and sat in the doorway of his shop. I suppose it is all very cowardly, to talk as I am talking, but it would be very much worse, I should think, to deceive myself and you."

The woman did not answer. She was looking into the fire. The little blue flames in the wide fireplace danced up and down upon their

bed of coal in impish merriment at all the trouble of men's lives.

Presently the man began again. "Yet a woman cannot wait always," he said, "and I have no right to ask it of you. I must step aside out of your life and beg to be forgotten. It is a terrible ordeal for one who has gone down into the *melée* with his lady's colors on his helm to return beaten and overthrown and say, 'This quest is not for me.' It is hard to have the hope of one's life battered out and to live on in the world, and yet men do, and I shall, I presume.

"We are taught in youth that the world is a happy place, and I judge that it is a bit of illusion, like the black goblin and the fairies, and yet, we all try very hard to believe the old housewife tales, and cling to them, and give them up grudgingly and with regret. I shall always remember how very sorry I was when I first realized that there really were no fairies. I was only a child, but it made me unhappy for days. It seemed to put all my reckoning out of joint. And so I have always believed that happiness existed in the world, and that

it came to men somewhere in their lives about as the beautiful princess comes in the fairy stories. It never occurred to me to doubt its coming. True, it never came, but everything that did come seemed only to prepare a way for its coming at some day farther on. Now I see that this is just an illusion like the others, and I confess that the discovery has jarred me frightfully."

The man's voice wavered for a moment; then it grew stronger. "I don't quite see how the world can ever seem a beautiful place after to-night. The sky may be very blue indeed, but the man whose eyes ache will not look up to see it. The birds may sing gloriously in the trees, but the man whose heart is an empty house will not care at all."

Randal stopped and looked down at the woman. He noticed how very soft and heavy her brown hair was, and how delicate and slender her hands were. He noted vaguely, too, the artistic effect of the folds of her gown and the shadows on her face.

"Marion," he said, "If I did not love you better than any other thing in the world, I

would not be urging these bitter arguments against my own happiness. I would not be so desperately anxious about your welfare. I should not be so fearful of the future. I should take the chance without the hesitation of a moment. But the very depth of my love makes me a coward. I could not bear to see you subject to all the evil things that come with poverty. I know what a frightful plight it is—how it crushes out the sweetness and the nobility of one's life, how it squeezes the heart, day after day, until it finally becomes a dry husk in one's breast."

Randal's voice was now thick with emotion. "Marion," he said, "do you hear me? Do you believe me?"

The woman's hands tightened on the great arms of the chair, and for a moment she was silent; then she began to speak, slowly and distinctly.

"I do not know," she said. "I must have time to think. Yet I have believed you all these years. I must believe you now. Yes, I do believe you now. But you are wrong, frightfully wrong. You forget that a woman

is a human being with a heart. You think I am afraid of the world, afraid of poverty, afraid of life as God makes it, as God wills it; that I am a fragile something that the rain and the sunlight would ruin if it touched; that I am a something more or less than you, a something that requires ease and luxury and all the gilded stage-setting of wealth—and you are wrong. If I love you, of what value to me are all those other things without you? If I love you, it is not all these things I want—it is you. I ask you to answer this, and by what is true in your heart, know what is true in mine: Would you be happy with all that wealth can give you and without me?"

"No," said the man, "not after to-night. No."

"No more would I," added the woman.

The heart, as it is said, speaks clearer to the heart when tongues are silent, and it is said that grief and happiness when riding high in their meridian have no need for the cumbrous medium of language.

After a long silence, Miss Lanmar began again. "Men cannot understand," she said;

" a woman's heart is so miserably strange. Things either slip around it, leaving no mark at all, or they sink in and become a very part of the woman's heart itself. There is no middle ground; no half joy; no middle hurt. So it comes about that if one's image creeps into her heart, it must remain. True, the world may never know; the world is very stupid. But for all that, the woman's heart will hold its tenant, and when she is alone or in the dark, she will know and feel its presence. It may be that the woman will pray to be rid of the evil thing, or it may be that she will pray to hold it always as a gift of good, but be that as it happens, the woman's heart will remain forever helpless to evict its tenant.

" Is it strange, then, if I love you, that I should want to go with you and live with you, and be with you always, and make your joys and your burdens my joys and my burdens, and have a share and an interest in everything that comes to you ? Is it strange that I should hold wealth or place or even honor as nothing against you ? Is it strange that I should be miserable, thoroughly, utterly miserable with

every other thing in the world, and you denied ?"

The woman's voice faltered and broke; her hands relaxed, and began to slip from the great arms of the chair. The man came over, and knelt down beside her and put his arms around her.

"Marion, dear heart," he said, "you do love me. You will trust me a little while,— just a little while ?"

The woman's head slipped down on his shoulder. "Love you!" she murmured, "I have always loved you. Surely I shall always love you. But when you are gone, the world is so empty, so miserably empty!"

## VI

"I THOROUGHLY appreciate everything you have mentioned, Mr. Hergan," said the clerk Parks, "but it is quite impossible. Mr. Mason is entirely inaccessible. I should not dare interrupt him."

"Look here, my friend," responded the gambler. "I have heard this same talk every day for the last week, and it don't go any longer. I have got to see this lawyer, and I have got to see him now. Do you understand me?"

"Oh, yes," replied the clerk, with a faint smile, "I understand you perfectly, but it is entirely useless to urge the matter any farther. The business with which Mr. Mason is at present engaged is of great magnitude. He would not permit an interview at all. I am very sorry, but, of course, I can do nothing for you."

The gambler did not respond. For a few moments he was silent. Then he put his hands into the inside pocket of his coat and drew forth a rather battered leather pocket-book. He held the pocket-book under the table, opened it slowly, and selecting a fifty-dollar bill from among a number of others, laid it gently on the table.

"There," he said, "is my ante. I want in the game."

The eyes of the clerk began to contract slowly at the corners.

"My dear man," he said, "I should like to do this for you, but I don't see how I can. I don't believe Mr. Mason would even listen to me just now. I don't——"

"Wait," responded the gambler; "I sweeten it."

Thereupon he selected another bill from the pocket-book and spread it out carefully beside the other upon the table.

The little bald clerk began to drum on the chair with his fingers. His eyes wandered from the money to the door of Mason's private office, and back again. Presently he turned to the gambler.

The Hon. Ambercrombie Hergan held up two fingers. "Don't call," he said, "I tilt it to one hundred and fifty." And he added another bill to the two, and pushed the money across the table to the clerk. Then he closed the pocket-book deliberately and replaced it in his coat.

Parks arose, picked up the money without a word, and passed into Randolph Mason's private office, closing the door carefully behind him. In a very few moments the clerk returned. He came up close to the gambler and put his hand confidentially on his shoulder.

"My friend," he said, in a low tone, "you are not a fool. I have told some lies to get you this interview. Look sharp, and say as little as possible."

"What lies?" asked the gambler, arising.

"Such as were useful," responded the clerk. "Quite too tedious to enumerate. Please walk into Mr. Mason's office, sir, and remember that you are my brother-in-law. Answer the questions which are put to you, and don't volunteer talk. It is n't wise."

The gambler opened the door to Randolph Mason's private office and entered.

## VII

THE Secretary of State came slowly down the steps from Randolph Mason's office. At the entrance to the great building he stopped and looked up and down the busy, jostling thoroughfare. It had been but a few years since he was a grain in this vortex, and now that past seemed ages removed. He was not conscious of anything of interest in the very familiar scene. Just why he had stopped to look, this man would not have been quite able to explain. In truth, he was striving to obtain his mental bearings. He had been flung violently upon another view point, and he was endeavoring to comprehend the loom of this new land. His sensations were not unlike those of one who but an hour before had gone into the operating room of a surgeon, walking as he believed to his death, and now

returned with the tumor dissected out, and the hope of life big in his bosom. The world was an entirely different place from what it had been some hours before, and the gambler's steps were firmer, and his ancient careless spirit had returned.

At this moment, as it pleased Fate, a cab stopped before a broker's office on the opposite side of the street, and the Governor stepped out. The gambler darted across and caught his companion by the shoulder. The Governor turned suddenly.

"Well," he said, in astonishment, "is this an assault *vi et armis?*"

"No," said the gambler. "It 's worse than that, Al. It 's a mandamus. You are not to go in that broker's office."

"Not to go in?" echoed the Executive. "Why not?"

"Al," said the gambler, grinning like a Hindoo idol, "I said this here was a mandamus. I guess the judge don't ever explain 'why not' in a mandamus."

"Good chancellor," replied the Governor, with mock gravity, "I resist the order."

"On what ground?" said the Hon. Ambercrombie Hergan, with such a sage judicial air as might obtain with a truck horse.

"First," replied the Governor, "that the mandamus was improvidently awarded. Second, that the Court issuing the writ was without jurisdiction. And, third, that the act sought to be restrained is not entirely ministerial, but one largely within the discretion of the officer."

"All them objections," said the gambler, "this Court overrules."

"But," continued the Executive, "in this case the mandamus cannot lie. I move to quash the writ."

"But it does lie," asserted the powerful devotee of fortune, hooking his arm through that of the Executive and turning him down the street, "and she can't be squashed."

The Governor had observed the very great change in the man, and knowing the Honorable Ambercrombie Hergan, he knew that this erratic person had chanced upon some solution for his dilemma—strange and but half-practical, the Governor had no doubt, but certainly

not commonplace, and so he made no further offer of resistance.

"Al," said the gambler, hurrying his companion through the crowded street, "do you know where you are going?"

"I have n't the slightest idea," observed the Governor, with greatest unconcern.

"Well, I 'll tell you. You are going first to the hotel, then to the railroad, then to the Southwest, and you have just fifty-nine minutes between you and the train."

The Governor stopped short. "I can't go, Bill. I must sell these stocks."

"That 's just the point," said the gambler. "You aint going to sell them stocks. That 's why I issued this here mandamus." And he seized the Executive by the arm and fairly dragged him across the street.

"Bill," protested the Governor, "Bill, this is all nonsense. It don't go."

"Everything goes," said the gambler. "Come on. We have lost three of them fifty-nine minutes already."

## VIII

THE Emporium of Crawley was not quite a trading-place as the Greek root of the word would indicate, unless transactions in which the unwary bartered his gain for experience, and the great unscrubbed of the Southwest pitted their wage against the riot of dissipation, could be held to partake of the nature of commerce. It was a fad with Crawley to assert that his Emporium was a clearing-house,—a rather grim jest, heavy with truth. Indeed, all the currency of this primitive land seemed to pass, sooner or later, through the mammoth establishment of First Class Crawley, and in season and out of season as the dollar went through, a portion paused and remained in the fingers of the proprietor. And for this, also,—as the common-law pleader would put it, — truth clung to the pet declaration of Crawley.

When the population gathered night after night under the roof of his Emporium, their troubles came also; and when the smoke grew thick and the tanglefoot whiskey began to assert itself, there were other things to clear up beside matters of currency. Matters of consequence and matters of no consequence were cleared by the same rapid, drastic measures. Bad men here decided who was the worst or the best, as they were pleased with the term. The henchmen of rival cattle kings submitted the vexatious question of a brand on a stray heifer to this court of instant resort and quick decision, and other concerns of the citizen, affecting perhaps his truth, or honor, or ability for a vice, were determined suddenly and for all time without the wrangling of counsel or the tedium of courts.

If a Mexican was so short-sighted as to slip his knife into a tenderfoot, some one shot the Mexican, and the crowd "lickered up." If the faro dealer killed his man, it was usually because the man needed killing, and certainly the faro dealer was the best judge of this. On the contrary, if one shot the dealer, this was

considered a public calamity, demanding an explanation, since the dealer was a *quasi* public functionary, and the convenience of the citizen required that the game should continue. One's life was perhaps the cheapest thing below the Central Pacific Railroad, and it was entirely the duty of the individual to see that it was maintained. If one was unsteady on the trigger, or caught napping on the draw, one was held to have died by virtue of contributory negligence.

To be sure there was law, and machinery for its execution; but the machinery was liberal, and had ideas of its own, and the law adhered with supreme unconcern to its maxim—*De minimis non curat lex.*

First Class Crawley had been splendidly trained for the duties of his position. If Fortune had been moving of design, she could not have schooled him better for such a life. Some thirty years before, he had been a sutler with the Army of the Potomac—not the sutler of romance, but the sutler of reality; following the army bravely, but at such a distance to the rear as to be at all times extremely safe, and

exacting for his valuable public service every gain that human ingenuity could discover. It was no wrong in the mind of Crawley to cheat the common soldier out of his eyes; belike the soldier would be shot on the morrow, and then all opportunity to cheat him would cease, and if prior opportunity had not been seized and enjoyed, Crawley would regret.

When the " bitterness of death " had passed, Crawley became a justice of the peace in Ohio. Here the field for his talent was broader, and Crawley arose and spread like the bay tree of Biblical record. Crawley held it as a basic principle that the machinery of human justice could not be maintained without ample sinews of war. It was best, to be sure, if these sinews could be wrested from the wrong-doer, but, failing that, the innocent must contribute. Every litigant was presumed to proceed at the peril of costs. The matter of costs was one vital to Crawley, and loomed constantly. The right or justice of a cause was never for a moment permitted to obscure it. If the plaintiff was impecunious, then the decision must be against the defendant, else the costs could not be had,

and *vice versa* as it had pleased Providence to place substance.

This was a high conception of human justice; since it passed by the trivial controversy of the litigants, and placed the burden of legal procedure upon the one best able to support it. First Class Crawley maintained further that it was the part of wisdom in a government promptly to release the criminal who "shelled out," since the revenues of the State arose largely from the fines imposed upon the evil-doer, and it was certainly quite useless to retain the criminal at public expense after having squeezed him thoroughly, when he could be returned to society and squeezed again later on.

Crawley might have been the father of a school, had he not found the school in Ohio established to his uses. Consequently his fame was local, and his methods being of ancient origin in this Commonwealth, provoked no comment, and indeed he might have passed on, with the usual career of such ambitious spirits, to a seat in the legislature, had he not unwittingly crossed into a neighboring State in order to attend a reunion of the Grand Army

of the Republic. Here one, smarting from a hurt, pounced down upon him with a warrant for a felony, and that same night the visiting justice was a guest of the State. But First Class Crawley was no man of feeble resources, and two days later he gave a straw bond and vanished like a newspaper war cloud.

In the Southwest, Crawley was a person of importance—a court of last resort on all matters, barring none. If bets were made, Crawley was umpire. If questions were argued, Crawley was judge. If one wanted advice, one went to him. If one wanted information, one went to him; and if one needed money, one went always to First Class Crawley, and put up everything but his life. No function was complete without the presence of this celebrity, be it bull fight or prize fight, or dog fight, or a prearranged resort to the arbitration of the Winchester. Crawley was a great man, in counterdistinction to a bad man. Personally, he neither quarrelled nor fought, and one would have no more considered shooting at Crawley than he would have considered shooting at his grandmother. This proprietor of the

Emporium maintained his position, not by virtue of arms and skill in their use, but by virtue of an interesting something which passed with him for an intellect.

Consequently, when he and Hiram Martin, of the Golden Horn Mining Company, sat down in the private gambling room of the Emporium to a private interview with the Honorable Ambercrombie Hergan, they were expecting to realize from the time expended. They were both attentive and interested, since the reckless Secretary of State was known in the lingo of the guild as an "easy member." If he had money, or could obtain money, it would eventually fall into their clutches as it had always done. Hence their interest was genuine.

"Boys," said the Secretary of State, "I have a scheme to make a stake, and I want you in on it. I have been over in the East, and I have got it all figured out, and it 's a cinch."

The owner of the Golden Horn folded his hands over the vast expanse of his stomach and smiled benignly. He knew all about the usual combination of circumstances set down in the elegant diction of the gambler as a "cinch."

He was an expert upon things of this sort, but he volunteered no information, and no comment. He merely smiled and murmured "Yes," in a voice which reminded one of oil being poured from a very full barrel.

"You see," continued the Honorable Ambercrombie Hergan, "it 's this way. There is a broker in Chicago who is a friend of mine. I saved him from the jug when he was a kid, and he never forgot it. Well, he went to Chicago, raked together a bunch of money, and bought a seat in the Stock Exchange. He was lucky, and now he is away up. He is on the inside, and he says that there is going to be a big raise in oil stocks ; that the Standard Oil Company has been forcing it down in order to squeeze out the little dealers, and that they are right now at the bottom, and when they let go, it will fly back to a dollar."

At this point in the narrative, Crawley murmured "Yes," then leaned back in his chair and closed his eyes. He was not quite ready to puncture Mr. Hergan's balloon, and it was not his way to offer objections to unfinished propositions.

"Now," said Hergan, leaning over and resting his arms on the table, " the plan is to form a big pool and buy oil, and make enough at one haul to go back to civilization and live like a king. That is the scheme, boys. It 's good."

First Class Crawley opened his eyes slowly, and putting out his fat hand, began to caress the green cloth on the little round poker table.

" Billy," he said slowly, " I expect that is a good scheme, and I expect there is money in it,—may be tubs of money, but me and Martin aint speculators; we never so much as saw a ticking machine in our life. We don't know anything about new-fangled ways to get rich. We 're both old fogies,—just common old fogies, and I reckon we had better stay out. Of course, I aint knocking on the scheme. It looks good, mighty good, but me and Martin aint young any longer; we 're getting old and heavy on our pins, and we aint got no nerve like we used to have. Still I aint knocking. Me and Martin would like to see you make a pile of money, would n't we, Martin ? "

" Yes," gurgled the owner of the Golden Horn, " we would that."

The Honorable Ambercrombie Hergan straightened up and thrust his hands into his pockets. "Of course, boys," he said, "it 's a gamble, but it 's a ten-to-one shot better than a faro bank. If it goes our way, we will have all kinds of money; if it goes the other way, we are skinned to a standstill. I am tired of little gambles, and I am going to make one big play if I eat snowballs for the next twenty years. I would like to have you boys in, but if you don't believe that the thing is easy to beat, you can stay out."

An inspiration came to First Class Crawley, and he seized it with the avidity of a shark. "Billy," he said, with amiable confidence, "you have no better friends in this here country than me and Martin—has he, Martin?"

"No," muttered the fat owner of the oleaginous voice, "he aint."

"And me and Martin," the proprietor went on, "would go in anything in the world that you wanted us to go in, and it would n't make no difference to us what it was, if you said it was a good thing. But me and Martin are pretty nigh sixty, and if we would go broke,

we could never get on our feet no more. We are skeery, Billy; me and Martin are skeery, but we are ready to do anything for you that we can. We are ready to help you any way you want to be helped, because you are dead game, Billy,—that 's what you are—you 're dead game."

The wary Hiram Martin was totally in the dark as to what Crawley was probing for, but he had unlimited confidence in the proprietor of the Emporium, and he assented blandly. Crawley, he knew, followed no cold trail; Crawley worked no salted lead, and if he stooped to " crook the pregnant hinges of the knee," there was something in it for Crawley, and at no great distance.

" Well," responded the Secretary of State, " I am obliged to you both, but I guess there is nothing I need just now. Of course, I have got to raise a bunch of money for this deal, but I sort of arranged that in New York."

The ulterior motive of Crawley was now quite clear to the owner of the Golden Horn. Hergan would require money,—perhaps a large sum for his venture. If good security could

be given, there was no reason why they should not advance the cash at a large and comfortable discount.

The officer of the Commonwealth moved his chair back from the table as an indication that the secret conference was at an end. As he did so, the proprietor of the Emporium leaned over and spread out his fat hands on the green cloth.

"Billy, old man," he said, in a voice that indicated gentle reproach, "there was no necessity for you to go among strangers to raise any money you wanted; me and Martin have saved up a little, and me and Martin would be glad to let you have it if it is any accommodation, would n't we, Martin?"

First Class Crawley failed to add that both he and Martin would require the trifling detail of a substantial surety, but they concluded shrewdly that if Hergan could raise money in New York, he had obtained some first-class support, and if this security were sufficient for an Eastern bank, it was amply sufficient for all purposes known to commerce. Hence the apparently unconcerned Martin consented most amiably.

The Honorable Ambercrombie Hergan settled back in his chair and grew thoughtful. "I aint closed the loan," he said, after some little consideration, "and I would just as leave borrow it of you, boys. The fact is, I would a little rather borrow it of you. I am paying pretty stiff for the money, and I would rather pay my friends than the Yankees in the East."

"Yes," observed the unctuous mining magnate, although he had not intended to speak at all.

"But," continued the Secretary of State, "I reckon you would n't like to put up as much as I need. I am going to crowd the bank this once."

"Well, Billy," drawled the proprietor of the Emporium, "I expect me and Martin can ake it up for you. If we aint got enough, we can get some around and piece out. Least ways, we will try. About what sum might you need?"

"I reckon," responded Hergan, "that I shall want about fifty thousand."

The hands of Hiram Martin tightened over his stomach, and for a moment Crawley studied

the ceiling with placid indifference. He had turned Hergan into his own channel, and the transaction being assured, it was now the part of wisdom to affect gravity. Presently he spoke, slowly and anxiously: "That 's a powerful big wad of money. Still, me and Martin——" Here he stopped short and turned to his companion.

"Powerful big," echoed the mine owner, and volunteered no further observation. He understood First Class Crawley as few men are understood, and such observations were quite useless between them, except for the effect upon the victim at hand.

"Still," continued the proprietor of the Emporium, "I expect we can raise it some way. About what terms do you allow on?"

"I guess thirty days will be long enough," responded Hergan. "Thirty days at twelve per cent. is how I have been figuring it."

"Yes," drawled the gambling king, "and the security?"

"Well," said the Secretary of State, "I have calculated to give the Governor and Culverson."

"They are good, I reckon," observed the wary Crawley. "Aint they good, Martin?"

"Might be worse," responded the oily owner of the Golden Horn, "but it aint that. It 's the rate. Seems like mighty little on a short loan."

"It is mighty little," continued Crawley, after a silence of some moments. "We would have to give more than that for what we borrowed 'round. There would n't be nothing in it for us, Billy,—not a cent to me and Martin."

"I tell you what I 'll do," put in the Honorable Ambercrombie Hergan, abruptly, as though the idea was new and sudden in its coming, "I 'll give you twelve per cent. for the money for a month, and I will enter into an agreement to turn over to you two one-eighth of what I win on the gamble."

Crawley was very grave. The proposition pleased him hugely, but emotions found no expression with him. To loan fifty thousand dollars on good security at an enormous rate of interest, and in addition to have a substantial share in a speculation without standing to lose a cent, was a condition of affairs not likely

to arise with much regularity in the span of a gambler's precarious life. Yet Crawley was not anxious. To the spectator he was sad and unconcerned. He knew quite well that this proposition was Hergan's ultimatum, and he was going to accept, but desired to appear to accept rather as a matter of kindly feeling toward Hergan than by reason of the fact that the inducement had increased.

" Billy," he said slowly, almost sadly, " me and Martin don't want to make anything off of you, and we will try to fix it any way you want it. If you want to arrange the thing that way, why it suits us—it suits me and Martin."

" All right," responded the Secretary of State, getting up from the table. " I 'll go over to the Governor's house and have Al fix the papers. The sooner I get it, the better chance I 'll have to win a stake."

" Billy," called the proprietor of the Emporium, as the official of the Commonwealth was passing out through the door, " just make the note payable to Martin."

The Honorable Ambercrombie Hergan nodded his assent, and departed, leaving the fat

gambling kings of the Southwest to prolong the secret session.

When the door was closed, First Class Crawley turned to his companion, his little gray eyes slipping around in their puffy sockets.

"Martin," he said, "aint he a mark?"

The stomach of the rotund Martin undulated like a rubber bag filled with fluid. "Of all damn fools," he gurgled.

"Were it clear?" inquired the proprietor of the Emporium.

"Plain as a speckled pup," responded Martin, "except the note."

"You see," said First Class Crawley, turning around in his chair, "you live in New Mexico, and I wanted the note in your name so that if we had to sue we could get it in the United States court. You can't ever tell what the State courts are going to do with you, but old Uncle Sam's courts don't stand no flim-flam."

"Crawley," announced the owner of the Golden Horn, "Crawley, you are built like a white man, but you have got a head on you like a Yankee."

When the Honorable Ambercrombie Hergan

returned to the Governor's residence he found that celebrated official and Major Culverson in the library. The irrepressible Major was engaged in presenting a lurid and highly dramatic history of how he had straightened the tangled exigencies of the Commonwealth during the absence of his associates, and how, by virtue of his magnificent personality, the entire Southwest, from the borders of lower Utah to the Rio Grande, was now the placid abode of peace and fraternal good-will. He stopped short as the Secretary of State entered, and bowed. Then thrusting his hand into the front of his coat, he exclaimed, with the affected manner of a tenth-rate actor, "Good morrow, good gambler."

"Top chop," responded the Honorable Ambercrombie Hergan. "And a favorite."

"I opine," continued the Major, "I opine, sir, from your gladsome tone that the fat sharks have been successfully harpooned."

"Gentlemen," said the Secretary of State, dropping into a chair by the table, "the reports of this race will announce that Hiram Martin and First Class Crawley 'also ran.'"

"Which being translated," observed the Governor, "means that these gentlemen will advance you the money on the line suggested by your New York lawyer."

"Yes," said the gambler. "You are to fix up the papers, and I am to go down there to-night. Everything turned out just like Randolph Mason said it would. If the rest goes through as slick, we will be riding in carriages."

"Produce the sealed orders," said the Governor, partaking of the mock dramatic atmosphere.

The Secretary of State drew a big envelope from his pocket and threw it down on the table. The Executive leaned over, opened the paper, and, after having examined it carefully, took up a pen and began to write.

Major Culverson wandered over to the window and looked out at the hot, monotonous, sterile country. "I wonder," he murmured, "if this is really the passing of the Honorable Ambercrombie Hergan?"

## IX

THE audience in the court-room arose and remained standing until the judge in his black silk robe had entered and taken his place on the bench. Then the audience resumed its seat, and the clerk began to read the proceedings for the previous day. The ceremony attendant upon the sitting of the Circuit Court of the United States carried with it an impressive sense of majestic, imperial authority, and an air of grave, judicial deliberation. It was the Government of the United States of America, the spirit of supreme order and law moving through its servant, and, next to the Great Ruler of Events, it was greatest. It had assumed for the good of men the right to sit in judgment, and to say wherein lay the justice of their complicated quarrels. Before it, every man's cause was of equal import, and every

man was of equal stature; bond or free, one stood before it naked of influence, and with his shoulder made as high as the shoulder of his fellow.

This is the theory. If it fails, it is because the law at best is but a human device, and its servants, after all, are but men like the others.

The building in which the Federal Court held its session was a substantial, handsome structure, and maintained a strange contrast to the town in which it stood. The town was rough, miserable, uncouth; the temporary habitation of men, struggling ever with the relentless *anankè* of things; in equal contrast to the officers of this court was the audience in the great court-room. They were the pioneers of civilization; a motley crowd in which the best and worst of human society was mixed and intermixed. They were, for the most part, bronzed, bearded, fearless examples of the inexorable law of the survival of the fittest, but not all. Some were the reckless advance agents of those hardy vices that follow close in the wake of empire,—devils too villainous to be tolerated in the cities of the East, and too

bold and too wary to be stamped out by the deliberate machinery of the law.

Against these the officers of the court bore some evidence of polish. They were exact, calculating men, bred to respect order, and obey and maintain the customs of law. The contrast was significant, and one recalled and understood the constant bitter conflict between the judicial tribunals of the State and the judicial tribunals of the Federal Government, bitterly waged and as yet undecided. From one standpoint, this was the calm tribunal of the supreme power of the land, providing the same rights and remedies on the very border of its jurisdiction that it provided at the capital itself, favoring no condition and acting as even-eyed as nature.

On the other hand, one understood how the remote Commonwealth held this court to be the tribunal of a far off imperial government, seeking to enforce laws and customs foreign and repugnant to the laws and customs of its people. To them the Federal judge was a king's governor, travelling with his retinue over a subjugated province, and enforcing his

edict by virtue of foreign armies quartered convenient to his hand. And, looking on from this point of view, one understood why the outpost State hated this court so bitterly, and whence arose the fierce clamor against it. One understood how the far West smarted under its injunctions, and denounced them as the royal mandates of an emperor's consul, and how the far South collided with this tribunal and cried out against it to the Congress of the United States in a memorial clanging like a bell.

So the conflict was easy to understand, and it was easy to appreciate how large the spectre of discord loomed, and most difficult indeed to force the problem to some happy end.

When the clerk had finished, the marshal called the jury, and struggled bravely, but at times unsuccessfully, with the marvellous tangle of names. Indeed, if the list of this panel had been placed before a student of philology, he would have required no further history of the civilization of the Southwest. When the marshal had ended, the judge directed that the jury should be dismissed

until two o'clock, and when order was again restored, the judge turned and looked down gravely from the bench.

"This court," he said, "is ready to pass upon the matter taken under advisement yesterday afternoon. It seems that one Hiram Martin, a citizen of and a resident in the State of New Mexico, brought an action in this court against Ambercrombie Hergan and others to recover the sum of fifty thousand dollars, money, as it is said, borrowed by the said Hergan. The declaration contained the common counts *in assumpsit*, with which was filed, in lieu of the bill of particulars, a promissory note, made by the said Hergan to the said plaintiff, calling for fifty thousand dollars, and endorsed by one Randal and another Culverson. This note, in addition to the matter usually had in such instruments, recited that it was given in accord with a certain agreement of even date therewith, made and entered into by the parties to the said note. The case coming on for trial, the defendants, by their attorney, appeared and filed their plea exhibiting the said agreement, maintaining that the

said note was given for money loaned for the purpose of being used in a gambling venture, and was, therefore, void at law. An issue being had upon the said plea, the case was put to trial, and the said agreement having been admitted, the defendants, by their attorney, moved this court to exclude the evidence, and direct the jury to find for the defendants; which motion this court took time to consider.

" The facts herewith concerned are involved in no controversy, and the agreement being couched in plain terms, admits of no doubtful construction. It would seem that the defendant Hergan called at the gambling house of one Crawley, a resident of this State, and requested a private interview with the said Crawley and the plaintiff ; that in this interview Hergan explained that he was considering what it pleased him to denominate ' a gambling venture in oil,' and solicited the two men to join him in the venture. This they declined to do, but suggested that they would advance to Hergan such money as he might need upon a promissory note with good security.

" It appears that some controversy arose as

to the rate of interest to be paid; and a division of the profits was suggested in lieu of the larger per cent. This matter was finally concluded by the plaintiff and the said Crawley advancing the said sum, and taking therefor the note filed in this cause, and in addition thereto entering into this agreement in writing with the said Hergan, wherein it is set forth that the money loaned is to be used by the said Hergan for the express purpose of 'a gamble in oil,' and for no other purpose; and that if any profit should result from said gambling venture, the said plaintiff and the said Crawley were to receive one-eighth of said profits. It seems that the money was paid and presumably used by Hergan for the purpose as stated. Afterward the note was presented for payment, and being refused, was duly protested, and later sued upon in this court.

"It is maintained by the defendants that this transaction was contrary to public policy, and that the money, having been loaned for a known illegal purpose, cannot be recovered in a judicial tribunal, but falls within the purlieus of those matters which are *par se ex*

*turpe causa*, and for which the law provides no remedy. On the contrary, it is urged by counsel for the plaintiff that the transaction as between the parties to this suit was entirely commercial and innocent; that the plaintiff is a mere lender of money in a *bona fide* transaction, and is in no wise a party to any illegal proceeding, and that the mere use to which the money was put is a matter of no moment.

" The law, being for the welfare and the protection of human society, refuses to recognize and enforce certain contracts had among its citizens, when those contracts are founded in moral turpitude or inconsistent with the good order or solid interests of society.

" ' No people,' declares Chancellor Kent in his *Commentaries*, ' are bound or ought to enforce or hold valid in their courts of justice any contract which is injurious to the public rights or offends their morals or contravenes their policy or violates a public law.' Hence contracts having an illegal or immoral consideration, or tending to the violation of law or the debauching of public morals, are held to be *contra bonas mores*, and are void.

" It is said that the object of all law is to suppress vice, and to promote the general welfare of society, and it does not give its assistance to persons to enforce a demand originating in their breach or violation of its principles and enactments. It is not necessary that the law expressly prohibit or enjoin an act. It may impliedly prohibit or enjoin it. In either case a contract in violation of its principles is void under the wholesome maxim *ex turpi causa non oritur actio.*

" It may happen, and, indeed, frequently does happen, that the individual suffers great hurt from this sweeping policy of the law, but it is held that the good of the commonwealth rises above the mere benefit of the individual citizen, and that where the welfare of the whole of society is involved, the law will not pause to consider the injury entailed upon the mere unit. Hence the policy of government in the exigencies of war, when protection must be had against violence, and the policy of government in the peaceful administration of the law, when protection must be had against vice.

" Thus gambling, wagering, and all gambling

and wagering contracts and transactions are illegal as against public policy, since they are repugnant to the well-being of society, fraught with vice, pregnant with demoralization, and corrupting alike to the youth and to the aged, as they inspire a hope of reward without labor.

" It is significant that in matters of this nature human society has been progressive. Under the common law of England wagers were not unlawful or unenforceable, but the statute of 9th Anne followed and altered the common law, and the statutes of 8th and 9th Victoria altered it yet farther, and in the United States every separate Commonwealth has its respective statute striking at this vice.

" I think it will not at this day be denied that all transactions in stocks, by way of margin, settlement of differences, and payment of gains or losses, without intending to deliver the stocks, is a gambling or wagering operation which the law does not sanction, and will not carry into effect; and it has been held in the Supreme Court of the United States in the case of Irwin *vs.* Williar, ' If under the guise of a contract to deliver goods at a future day

the real intent be to speculate in the rise or fall of prices, and the goods are not to be delivered, but one party is to pay to the other the difference between the contract price and the market price of the goods at the date fixed for executing the contract, the whole transaction is nothing more than a wager, and is null and void.' And that 'Generally in this country wagering contracts are held to be illegal and void as against public policy.'

"Indeed the courts of the land have gone to the extremity of denouncing in no uncertain terms the dangerous character of these illegal ventures. Judge Blanford, in the case of Cunningham *vs.* The National Bank of Augusta, in speaking of these transactions termed 'futures,' declares: 'If this is not a speculation on chances—a wagering and betting between the parties, then we are unable to understand the transaction. A betting on a game of faro or poker cannot be more hazardous, dangerous, or uncertain. Indeed it may be said that these animals are tame, gentle, and submissive compared to this monster. The law has caged them and driven them to

the den. They have been outlawed; while this ferocious beast has been allowed to stalk about in open mid-day with gilded signs and flaming advertisements to lure the unhappy victim to its embrace of death and destruction. What are some of the consequences of these speculations in 'futures'? The faithful chroniclers of the day have informed us, as growing directly out of these nefarious practices, that there have been bankruptcies, defalcations of public officers, embezzlements, forgeries, larcenies, and deaths. Certainly no one will contend for a moment that a transaction fraught with such evil consequences is not immoral, illegal, and contrary to public policy.'

"In so far as this doctrine is concerned with the case at bar, it is certain that the parties understood and intended that the money loaned should be used for the purpose of engaging in an illegal speculation in oil,—'a gamble in oil,' as it is termed in the agreement, and that such gambling transactions are against public policy and the law of the land. But it is contended by learned counsel that all this can have no bearing upon the case at bar

for the reason that in the cases heretofore cited announcing these conclusions of law, the litigants were the parties who dealt with or for each other, and were the immediate parties engaged in an unlawful gambling venture, and the ones to gain or lose directly by the venture, and not a mere stranger who loaned money to another to engage in such transactions, and having but an undetermined interest in the result; and that the law will not lend its aid to a further wrong. The defendant having committed one wrong cannot be permitted to use his first wrongful act as an instrument whereby to effect a second wrongful act.

" The objection is ingenious, but I judge fully met by the declaration of Lord Mansfield in Holman's case: ' The objection,' said the learned judge, ' that a contract is immoral or illegal as between plaintiff and defendant, sounds at all times very ill in the mouth of the defendant. It is not for his sake, however, that the objection is allowed, but it is founded on the general principle of policy which the defendant has the advantage of, contrary to the real justice as between himself and

plaintiff, by accident, if I may so say. The principle of public policy is this: *ex dolo malo non oritur actio.* No court will lend its aid to a man who founds his cause of action upon an immoral or illegal act. If from the plaintiff's own statement or otherwise the cause of action appear to arise *ex turpi causa*, or the transgression of a positive law of this country, then the court says he has no right to be assisted. It is upon that ground the court goes, not for the sake of the defendant, but because it will not lend its aid to such a plaintiff.'

" This claim of the plaintiff to this action is unsound for the further reason that any promise, contract, or undertaking the performance of which would tend to promote, advance, or carry into effect an object or purpose which is unlawful, is itself void and will not maintain an action. The law which prohibits the end, will not lend its aid in promoting the means assigned to carry it into effect. Nor is it possible for an act contrary to law to be made the basis of a contract enforceable in courts of law. Hence when one lends money to another for the express purpose of enabling him to commit

a specific unlawful act, and such act be afterwards committed by means of the aid so received, the lender is a *particeps criminis*, and the law will not aid him to recover money advanced for such a purpose, and much less would it assist him, if, as in this case, he retained an interest in the result of the venture."

It was very unusual for counsel to interrupt the judge in the delivery of his opinion, but at this point the attorney for Martin arose.

"If your honor please," he said, "this court is taking away the remedy of the plaintiff, and permitting the wrong to stand. Does this court reverse the ancient doctrine upon which the theory of human justice has its eternal basis, the ancient doctrine that the law will always provide a remedy for a wrong?"

The faintest shadow of a smile flitted over the judicial face.

"That sage maxim: '*lex semper dabit remedium*,'" answered the judge, "is a gigantic error couched in very good law Latin. The motion to exclude the evidence is sustained, and the jury will find a verdict for the defendants."

## X

THE Governor's machine marched gravely out of the Circuit Court of the United States and down the wide steps, the Major leading, the Executive following second, and the Honorable Ambercrombie Hergan bringing up the rear, every man as silent and as solemn as a Japanese diplomat. The machine passed through the great arched doorway and directly across the street to "The Happy Maria" saloon, an institution with a variegated past. The machine filed in through the door and lined up before the bar as mysteriously as a country delegation in a caucus.

The Bartender of "The Happy Maria" was a lame actor from St. Louis. When he turned and beheld the solemn array, he stepped back and tapped his forehead tragically with his fingers.

"Ha!" he muttered, "it is Ulfius and Brastias and Sir Bedivere."

To this no response was made, except that the Major raised his hand and pointed to the bottle of "Dougherty" reposing on the second shelf beside the box of "scrap" and the proprietor's pistol-belt. The bartender hurried forward, took down the bottle, placed three little glasses on the bar and began to fill them. When he came to the third glass, he paused and set down the bottle. A puzzled expression gathered on his face. He thrust his forefinger into his mouth and began to lisp:

> "Be there two or be there three
> In our king's companee?"

The Major turned just in time to catch a glimpse of the Governor as he vanished in a telegraph office next door; then he swung around toward the barkeeper with the dramatic abandon of a professional at a benefit.

"Pour on, good seneschal," he cried; "it is the man who would be married. He hastens with glad tidings to the well beloved. He will return."

# MRS. VAN BARTAN

(See the famous opinion of Henry St. George Tucker, President of the Supreme Court of Virginia, in the leading case of Gallego's Executors *vs.* Attorney General, 3 Leigh, 450; also the opinion of John Marshall, Chief Justice of the United States, in the case of the Trustees of the Philadelphia Baptist Association *et al. vs.* Hart's Executors, 4 Wheaton's U. S. Reports, 330; also Knox *vs.* Knox's Executors, 9 W. Va., 125; 29 W. Va., 169, and cases cited.)

# MRS. VAN BARTAN

## I

"ALL this," said Randolph Mason, "is the veriest nonsense."

The younger Mrs. Van Bartan straightened up in her chair and looked sharply at the counsellor. She was a woman of magnificent presence, with a great fleece of yellow hair, fine eyes, and regular, clear-cut features.

"Do you mean that it is not the truth?" she asked.

"Half truth," responded Mason.

"Then," said the woman, smiling, "it is only half nonsense."

"Madam," said Randolph Mason, "if you desire my aid, you must explain this entire matter. I do not choose to guess riddles."

"I have told you," began the young woman, slowly, "that my husband and myself reside with his mother in a certain city of the Virginias; that his father is dead, and, by his will, left his entire property to the elder Mrs. Van Bartan—my mother-in-law; that was all true."

The counsellor nodded.

"The other part," she went on, "I was trying to put into a 'hypothetical case'—is n't that what you call it?"

She hesitated for a moment.

"It is hard to tell, and I was only trying to save myself, but I suppose the surgeon is quite useless if the wound is not fully revealed. If you will listen to me I will explain. It is hard to tell, and it hurts, but everything is at stake, and if I lose now I lose everything. It will simply mean that I have made sacrifice after sacrifice for nothing at all. One shrinks from putting one's heart upon a dissecting table where the valves may be pinned back and pried into with the point of a scalpel, and so one struggles with a hurt until it finally aches so bitterly that the expert must be had. Then

one goes to the surgeon or the priest or the lawyer, and takes an anæsthetic while he cuts it out."

"Madam," said Randolph Mason, "you talk like a diplomat: you say nothing at all."

The younger Mrs. Van Bartan unbuttoned her coat and threw it back with the air of one who has ultimately decided to keep nothing in reserve.

"I have been married three years," she began, "my father's name is Summers. In the good days of Virginia our family was wealthy, but of late years we have met with one disaster after another until the family became very poor, and the effort to maintain an appearance of respectability was a nipping struggle indeed.

"About this time the coal industries of West Virginia began to develop, and our city became a manufacturing centre. This brought in many Eastern capitalists, among them Michael Van Bartan, who established great iron mills, out of which he made a vast fortune. Shortly thereafter he died, leaving his widow and one son, Gerald Van Bartan.

This woman I have never quite understood. After the death of her husband, she maintained their country place in almost profligate magnificence, but she has always seemed terribly disappointed in her son. He was a good, easy-going fellow, and his mother, an ambitious, restless woman, had great plans for his future. But, failing that, and being a person of shrewd instinct, she set about finding for him an ambitious wife, who would probably be able to succeed where she had failed. But while the mother was striving to select a suitable woman for her purpose, the son paid court to me,—and I married him."

The young woman paused for a moment, and the lines of her mouth hardened. Then she went on:

"He was not quite the person with whom I had hoped to spend my life, but he had wealth, and we were so miserably poor,—and, I judge after all, one is never permitted to do just what one wishes in this weary world. This marriage was a bitter disappointment to Mrs. Van Bartan, but she was a woman with the resources of an empress. She came at once to me, and,

with the kindest and most gracious courtesy, welcomed me as her daughter, and began at once to shower upon me the most substantial evidences of her good will. We were taken to live with her at the country place, and everything was done that a shrewd woman could imagine to bring me completely under her influence, and, through me, to move my husband to the effort which she desired. But it was all an utter failure.

" I appreciated thoroughly the incapacity of Gerald Van Bartan, and said as much to his mother. I went deliberately to her and pointed out how very vain her ambition was, and how certainly it must come to nothing. I said how difficult it was for men to lift themselves even the least bit higher than their fellows; how it required years of labor and self-denial and courage. I reminded her that my husband had not one of the qualities necessary for such work; that he was not industrious, and not ambitious she knew well; that the habits of the man had been formed, and this work could not be now undone.

" Then I blundered like a fool. I said that

wealth had caused these habits to become fixed, and that we must accept him as his luxurious life had made him; that if he had been thrown out to struggle with poverty, some qualities might have been developed, but that he had never been forced to feel the necessity for an effort, and consequently he had never called his faculties into use, nor could he now, since the necessity did not arise. I begged her to abandon the effort as vexatious and entirely hopeless.

"To all this the elder Mrs. Van Bartan listened attentively and made no comment. When I had finished, she laughed, and said that I had entirely misapprehended her intentions toward her son; that she had no object in life but to make us as happy as it were possible to do, but that one could not tell what conditions might arise, and she had wished simply to put her son in a position to care for himself and me, if it ever should be necessary. Then she stroked my hair, as she might have done to a child, and bade me not worry over trifles. I now congratulated myself that the matter was finally settled, but I was fearfully

wrong. I had read this remarkable woman poorly. Although again beaten, she was unconquered, and she determined upon a final desperate move. Perhaps my foolish prattle furnished the suggestion, but it is rather more probable, I think, that her master mind evolved the plan out of what she considered a desperate condition."

The woman's face was now grave, and she seemed deeply in earnest.

"It was the plan of Mrs. Van Bartan to convince my husband and myself that future poverty was impending, but just how to make this impression strongly probable, was a matter of great difficulty, and one which she appreciated fully. In order to do this effectually, it was necessary for her, in some manner, apparently to dispose of her property, and at the same time actually to retain it in possession.

"This was a difficult problem, but difficult problems were not appalling to Mrs. Van Bartan, and she finally determined upon this shrewd scheme. She would make a will, leaving her entire estate at her death to the church of which she was a member, and entirely disin-

heriting my husband. This will could have the effect she desired, and at the same time leave her unhampered in the use of her property, and free to destroy this will or make another at her pleasure. This is now her plan. How I have discovered it is not of importance, since it is a part of her plan in this matter to have me suspect her intention and finally to have me believe that she has decided to cut us off without a dollar. Having determined upon this move, she will carry it through with the skill of a master strategist. She will have the paper drawn by her legal adviser in the presence of witnesses; she will declare her intention to the most substantial people of our city, and will take good care to see that her act is made known through the most reliable sources. There will be no blunder anywhere,—Mrs. Van Bartan does not blunder."

"Has this will been drafted?" asked Randolph Mason.

"No," replied the young woman, "but it will be made soon. Mrs. Van Bartan is now preparing public opinion for her act. She is far too wise to hurry."

"I see no danger in all this," said Mason, "since it is not this woman's intention to really disinherit her son. Ultimately she will destroy this document or make another."

"But," said the young woman, bending forward in her chair, "Mrs. Van Bartan is afflicted with an aortic aneurism, and may drop dead at any moment. This she refuses to believe, and although she has been examined by celebrated specialists, she stoutly asserts that her health is as good as it ever was in her whole life.

"Now suppose she makes this will and dies suddenly without having an opportunity to make another. What then? Her intention will not help us. This will holds, and we are left entirely without a dollar in the world. Now, what am I to do to save us? It is of no use to go to Mrs. Van Bartan. She is an iron woman. She has her plan, and Heaven could not change her in the least. I must do something. It all depends on me, and I don't know which way to turn. You must show me some way; you must do something."

Randolph Mason turned around in his chair and looked squarely at the young woman.

" Madam," he said, " you have neglected to tell me the most important matter."

" Oh, no, sir," responded the younger Mrs. Van Bartan, " I have told you everything."

" By no means," said Mason. " You have said that Mr. Van Bartan is not the man with whom you had hoped to spend your life. Who is that man ? "

The young woman looked down at the floor and was silent.

" Well," she said, " I don't know that I meant quite that. I was meaning, you know, that there were other considerations moving me to this alliance beyond mere affection. I did not say that I loved some one else, did I ? Did I say I loved some one else ? "

" You evade," said Mason, bluntly. " It is the weakling's method of confession, and as well the fool's method."

The blood came into the face of the younger Mrs. Van Bartan, and she looked up resolutely.

" You don't spare me at all," she said, bitterly. " You pry out everything, even the very heart linings. Suppose I did love some one else, what has that to do with this matter ?

That is all over and past and gone. Can't I permit it to sleep and be forgotten? Suppose there was another man? Suppose there is now? Must I empty out his heart too? Can't I spare him? Can't I leave him out of this?"

"I am waiting, madam," said Mason, quietly.

The young woman passed her hand downward over her face, as though to remove something that was clinging to her.

"If you must know," she said slowly, "his name is Dalton, Robert Dalton, a member of the law firm of Carpenter, Lomax, & Dalton, of our city. He is said to be an able lawyer. He is the elder Mrs. Van Bartan's legal adviser, but I have no right to tell you all this. It is unjust to him, and unjust to me, and unfair to us all."

"And he still loves you?" said Mason, with the blunt indifference of a surgeon who thrusts his thumb into a wound.

The young woman threw back her head. "You are brutal," she cried, "to ask such a question, and I should be a fool, a miserable, contemptible fool if I should answer."

"But you have answered it, madam," replied Randolph Mason.

The younger Mrs. Van Bartan covered her face with her hands, and began to sob. The counsellor sat and watched her, as an expert might watch an intricate piece of machinery that he was testing. There was no emotion of any sort visible in his face—nothing at all, except the intense interest of the expert.

Presently Mason leaned back in his chair. The result was evidently satisfactory.

"Is this man married?" he asked.

The woman did not answer. She simply pressed her hands tighter against her face. The counsellor waited for a few moments. Then he repeated:

"Is this man married?"

The woman's hands trembled violently. "No," she sobbed, "and he never will be."

The lines in the face of Randolph Mason grew deep and resolute as one has seen the lines in the face of a great physician when, in some desperate case, he finally turned from the bedside of the patient in order to write the prescription upon which he had decided.

" Madam," he said, in a voice that was firm and admitted of no protest, " this man Dalton is perhaps a person of some learning. Since he is your mother-in-law's legal adviser, he will have the matter in his hands. He is under your influence. Could a problem be more simple ? You have but to go to him and say what you have said to me. He will know what to do."

She dropped her hands in astonishment.

" Go to him ? Go to him ? " she repeated.

" Yes," said Mason, " and tell him the truth,—and wait."

" But," began the younger Mrs. Van Bartan, " how could he help me ? What could——"

" Madam," interrupted Mason, rising, " this is your coat, I believe. Permit my clerk to assist you to your carriage."

## II

ROBERT DALTON was of good blood, having descended from colonial families of degree. He was perhaps in his middle thirties, in appearance no usual man, straight as a spire, with a powerful face in which every feature seemed prominent; hair rather prematurely gray, and soft and clinging as a woman's, and withal a manner courtly to such a degree that the young, and those others unskilled in divining the natures of men, associated with Mr. Dalton relations of a so-called romantic nature. This conclusion was grossly erroneous, and led to much profitless gossip. In fact, Robert Dalton was a stern and practical man of large legal acquirements, with no more romance in his composition than a ship carpenter. In the practice of his profession he was always cold, clear-headed, and technical, be-

lieving no man, and fearing no man; in truth, the wags asserted, his courtesy was in itself a libel, because of all members of the bar no one was more rigid, more exacting, or more relentless than Robert Dalton, of Carpenter, Lomax, & Dalton.

The mental build of young Dalton rendered him especially valuable as a chancery lawyer, and this department of the business he gradually assumed until it was almost entirely in his hands. For years he drafted all difficult pleadings, especially difficult under the rigid practice of the common law obtaining in the Virginias. He drafted likewise all deeds, wills, and papers of like tenor, with such unusual care and skill that he rapidly gained a reputation,—the sort of reputation which it usually requires a lifetime to establish, and the value of which is above rubies.

When the judges spoke of him they said, "If Mr. Dalton prepared this paper it is probably correct."

It would be unwise to attribute to young Dalton an utter disregard for social relations. The error of such an assertion would readily

be detected by those who knew him. In fact, he was usually present at prominent social functions, and largely sought after by reason of his magnetic nature and the charm of his vigorous mind.

The father of young Dalton had been a man of improvident habits, and, immediately upon the death of his wife, squandered his large estate in the riot of dissipation, so that his son inherited nothing but a dilapidated manor-house and a single slave. This servant, a pure negro, was deeply attached to young Dalton, and the two continued to reside in the manor-house near the city suburbs, the negro acting as cook, valet, and man-of-all-work. This manor-house was one of the first built in the Virginias. It was surrounded by a long, ill-kept lawn, in which the ancient knotted oaks seemed to stand guard over the memory of some departed greatness. The house itself, covered with the green Virginia creeper, was little better than a ruin. The plaster had fallen away from the great pillars, and the walls were cracked, in places, almost to the roof.

Strangely enough, Robert Dalton never attempted to repair the estate, taking pride rather in its air of decay. This statement is not entirely accurate. He did, indeed, fit up the ancient drawing-room for the purposes of a library, thrusting in rows of bookcases beside long antique mirrors and mahogany window seats. These bookcases were filled entirely with reports of courts, late digests, the decisions of tribunals of last resort, and volume after volume on wills, contracts, and corporations, but scarcely a volume on standard or current literature. For these latter he had no inclination, and, as he apologetically explained, no time.

In this library, Dalton did most of his legal work, obtaining here freedom from interruption and the quiet which he required.

As the city developed, this neglected suburban street was seized upon and assumed as the fashionable quarter by the wealthy Eastern families. They paved it far into the country, and ruthlessly wiped out the splendid old homesteads, erecting on their ruins ostentatious palaces with prim lawns, reminding one

not a little of that civilized vandalism which would cut out from its frame the superb painting of a landscape and replace therein a practical and entirely accurate map of the same landscape.

These wealthy families swept out, too, the old social customs of this city, setting up elaborate formalities and impoverishing standards of dress and entertainment.

The recognized leader was Mrs. LeConte Dean, the wife of a nail manufacturer of vast wealth. Her receptions were the society events. Indeed, it has been said that recognition by this newly rich importation determined one's social status.

The Van Bartans were another of these wealthy families coming directly from the city of New York. The father had founded gigantic iron mills from which he had gathered a princely revenue. Upon his death, the wife, a grim woman of frightful prejudices, had continued to maintain their country place in sumptuous, albeit rather frigid, elegance. They had one child, Gerald Van Bartan, an utterly worthless young man of extravagant

habits and wandering aims ; nevertheless, a youth of generosity and kindly impulses. The boy was a source of ceaseless vexation to his mother.

Carpenter, Lomax, & Dalton were her solicitors ; especially Robert Dalton, in whom she reposed the greatest confidence, and not infrequently she spoke to him at great length of her difficulties with her son, and usually concluded by working herself into a towering rage.

When one morning in the early autumn it was announced that Gerald Van Bartan was very shortly to wed Miss Columbia Summers, a young lady of great beauty and of aristocratic lineage, but of reduced and nipping finances, the city was very justly indignant. Robert Dalton had for many years paid court to this young woman, and the self-constituted match-makers had long since entered up their decree in this matter and dismissed it, and they resented, as almost a personal affront, the going afield of their plans.

Thereupon idle folk prattled of the great blow to Dalton, his broken heart, and other drivel. There was no evidence that Robert

Dalton had any other than a passing interest in this matter, and neither his partners nor those others intimately acquainted with the man suspected that this gossip contained any element of truth. Indeed, he had come to be regarded as of stoical build.

When this rumor came to the ears of Mrs. Van Bartan, she received it with almost suspicious composure, and a few days later sent for Dalton, her solicitor, and inquired if she could dispose of her entire property. To this Dalton replied that she could, the title to all property having passed to her by virtue of her husband's will, of which she was the sole beneficiary. Thereupon she smiled, and said that she might require his services further on.

The wedding and receptions which followed were great social functions, and for three years thereafter Mrs. Van Bartan maintained the two young people in the veriest profligate magnificence, the elder woman anticipating every wish of the younger, and heaping upon her the costliest gowns and jewels to be had.

During this time, Carpenter and Lomax watched Dalton closely, but they could detect

no change in the man, except perhaps that he was even more rigid and exacting in his professional transactions.

Thus matters continued without event until the night set apart for the first autumn reception of Mrs. LeConte Dean. These were annual events of great revelry, and largely attended. The night was unpropitious, raw, and foggy, as October nights usually are in this region, but this in no wise interfered with the occasion; indeed, it was long remembered as one of startling magnificence.

This reception Robert Dalton determined not to attend, partly because he avoided as far as possible every gathering at which he might be thrown with the younger Mrs. Van Bartan, but principally because the firm had an important case in the Federal Court then sitting, and he had been asked to prepare an elaborate decree for the following day.

After determining to remain at home, Robert Dalton went into his library, gathered his books of reference from their cases, and began the preparation of his legal paper. This decree he found more difficult to draft than he had an-

ticipated, and, striving to adjust its intricate matters, he became more and more absorbed until he was entirely unconscious of his surroundings and of the time that had elapsed.

Finally he arose in order to refer to some report that was not within reach of his hand. As he turned to the light he beheld a woman, wrapped in the folds of a long party cloak, standing with her hand on the door, as though she had just entered. Dalton was so utterly astonished that he literally rubbed his eyes to ascertain if he were not the victim of an illusion. Whereupon the woman threw back her cloak, and advanced to the table, when he perceived to his amazement that it was the younger Mrs. Van Bartan. To this man she seemed a daughter of the very gods in the full bloom of womanhood. The rich velvet cloak thrown back from her bare shoulders, the ball dress clinging like puffy webs to a form that his brooding mind had idolized; her eyes illumined, and her splendid hair wound in loose coils above her dainty head.

It would all be very weary to set out in detail what occurred on this October night; how

the younger woman explained that she had finally divined the intention of the elder Mrs. Van Bartan, and how she had hoped to see Dalton at the LeConte Dean's, and not finding him had slipped away, and, availing herself of the foggy night, had been driven unattended to his house in order to implore his aid; how she came and stood beside him, and pointed out the dread results sure to follow the elder Mrs. Van Bartan's unnatural intentions,—results disastrous to her and to hers. Gerald Van Bartan was worthless, she knew that; he had never been taught to work; he was now too old to learn; it would mean poverty, grinding poverty, and shame worse than all; and her father, aged and broken in health, and the others of them, all dependent upon her, would be thrown out to huddle in beggary, literally, beggary.

How Dalton replied that there was nothing he could do; reminding her that the elder Mrs. Van Bartan was a woman of iron will, of stern resolve, of relentless determination, and that neither he nor any other living man could affect her. And how like a woman she an-

swered that he, Dalton, would be sent for to make the will, and that he must save her some way, she did not know how,—he would know, he was shrewd, he was a great lawyer, he could certainly find some way; this she knew, and he must do it.

And how he labored to show her that there was nothing he could do—absolutely nothing; that the whole thing was hopeless, thoroughly, utterly hopeless; and then how she came to him and put her bare white arms around him and looked up into his face, the big tears shining in her glorious eyes, and said that if this were true, then she proposed to tell him all the truth, the truth that she loved him, him only in all the wide world, him always from her very childhood, and that for others she had made this sacrifice; and how great, how awful a sacrifice it had been, men could not understand. How he coldly loosed her arms, although to do it wrenched his very heart loose; although he would have given his life gladly to have taken her in his embrace if only for a moment, and told her how he understood and how he loved her for it,

and how he would always love her to the very end of all things; but, instead, how he had sternly led her out to the carriage and forced her to leave him, and how he turned back into the library with his head swimming and his heart pounding like a hammer, and fought the whole thing out through the long October night, until the dawn crept in and the birds began to chirp in the Virginia creeper.

Some weeks later, as was anticipated, the elder Mrs. Van Bartan summoned Robert Dalton to her residence in order to prepare her will. Upon his arrival he found Simon Harrison, President of the First National Bank, and David Pickney, a steel manufacturer, both prominent citizens of unquestioned integrity; also the late Milton South, a most estimable physician. At Mrs. Van Bartan's request, Robert Dalton prepared the will in the presence of these three persons. When he had finished he handed the paper to the testatrix, who thereupon read it aloud in the presence of all, declared it entirely correct, and affixed her signature. As is customary, Dalton requested the three gentlemen to converse with the tes-

tatrix and satisfy themselves that she was in proper mental condition. This they did at some length, and not unskilfully, all being men of good sense. Afterward Harrison and Pickney subscribed their names as witnesses in the manner prescribed by the statute. Mrs. Van Bartan then placed the will in an envelope, sealed it with her own hand in the presence of all, and gave it to Simon Harrison to retain until after her death.

On the seventeenth day of December following, Mrs. Van Bartan died suddenly, and some days thereafter the will was opened and read at her late residence by Simon Harrison, executor. Gerald Van Bartan and his young wife were present, as was also Robert Dalton, and those others who had been with the deceased when the will was drawn. The elder members of the law firm, Carpenter and Lomax, were likewise present, and, at the request of Harrison, the Episcopal minister, Rev. Mr. Boreland, and his counsel, an obscure practitioner named Gouch.

The will was short, leaving the entire estate, real and personal, naming it specifically, for

some religious purpose ; and, in a spirit of grim jest, it would seem, one dollar each to her " beloved children," Gerald Van Bartan and Columbia Van Bartan, his wife.

The effect of this will upon the two young people, as the executor slowly read its provisions, would require a dramatist of no little stature to describe. The woman's face grew drawn and bloodless. The man's knees seemed to give way, and he would have fallen had he not been helped to a chair.

Dalton, men did not notice, for he was a skilful actor. When the executor had finished, Mr. Lomax plucked Carpenter by the arm, and inquired, in a low voice, if he had noticed any defect in the will. Carpenter replied that he had not, but that he had paid little attention to its form, whereupon Lomax requested him to examine it closely. The elder counsellor stepped up beside Harrison and began to go carefully over the instrument. Presently he stopped in amazement, and put his finger down on the paper.

" This will," he said, " is utterly void."

At the word, the blood surged back into

Columbia Van Bartan's face. She took two steps toward Robert Dalton, then turned and buried her face in the folds of a heavy curtain. Dalton was cool and entirely incredulous.

"I think you are very much mistaken, Mr. Carpenter," he said quietly.

"Mistaken?" answered the counsellor. "Why, this bequest is made simply to 'St. Luke's Episcopal Church.' That organization is neither an individual nor a corporation; it has no recognized legal existence. And this request must fail for want of a devisee."

At this point Harrison, who was a slow but very careful man, interrupted and explained with great accuracy that the will was in every detail exactly as the testatrix had desired it; that even the language used was her language; that she had said "St. Luke's Episcopal Church," and that Mr. Dalton had written it in the instrument precisely as Mrs. Van Bartan had said, and that there could be no possible error either by accident or design.

Carpenter was about to reply, when Lomax, noticing his excitement, stepped in between Harrison and the elder attorney, and pointed

out at great length that this was all no doubt true, but that, under the law, an indefinite religious organization, could not take a bequest; that this was not generally known to those unfamiliar with legal business, but that Mr. Dalton should have known that, in order to devise property to a religious organization, it must be given to a board of trustees, or to a certain person or persons, named in the will, for a specific and accurately determined purpose; that this, Mr. Dalton should have explained, and that his writing down the exact words of Mrs. Van Bartan had defeated her intentions, and rendered this bequest void.

"But, sir," put in the attorney Gouch, pompously, "the testatrix's intention must control. I see no——"

"Come, come, my good man," cried Carpenter, angrily, "this is what is known in Virginia as a 'vague and indefinite charity.' Such bequests have been held void for almost a century. Why Silas Hart attempted to create such a devise as early as 1790, and John Marshall, Chief Justice of the United States, held it void at law. Twenty years later,

Joseph Gallego attempted to bequeath a similar charity to the Roman Catholic Church at Richmond, and Henry St. George Tucker, President of the Supreme Court of Virginia, in a famous opinion, held that it must fail, and from that time until the present the courts of this country have been passing upon this common error of testators and their incompetent advisers."

Robert Dalton looked up anxiously. "In what cases?" he stammered.

"What cases!" almost shouted the elder counsellor, for he had now lost his temper completely. "What cases, you bungler! Ask the veriest pettyfogger; ask the commonest justice of the peace, but do not catechise me." And after having delivered himself of this venom, he seized his hat and cane and stalked out of the house. He was greatly enraged to think that a man of Dalton's learning, a member of a firm of high standing, should make such a stupendous blunder.

Later in the day Robert Dalton came to the office and requested Carpenter and Lomax to join him in his private room. His face showed

plainly the evidences of a great mental strain. When they were together he closed the door, and, turning to them, said that he had examined the question which they had raised, in regard to Mrs. Van Bartan's will, and he was now satisfied that he had made a prodigious error in drafting the instrument; that as his mistake would deprive a powerful church of a vast estate, endless criticism of a most acrimonious character would follow; that it was not just for any part of this criticism to fall upon the shoulders of either Carpenter or Lomax, and, therefore, he had determined to publicly withdraw from the firm. To this they made scarcely a courteous objection, and Dalton accordingly withdrew, publishing an announcement thereof in the daily papers.

The report of a great error in Mrs. Van Bartan's will spread through the city with the marvellous rapidity of an evil rumor. The vials of bitter criticism were poured out upon the head of Robert Dalton. Men declared that they had long suspected that he was a sham, a posing ignoramus, a dangerous blunderer.

The executor, Harrison, as was his duty, at-

tempted to execute the charitable bequest, but, of course, failed. Whereupon the press of the city stood up in the market-place like the self-complacent Pharisee and declared that in this day mistakes were crimes; that it was not enough for an attorney to do the best he knew,—it was his duty to know; it was not enough for an attorney to be honest, he must be likewise competent; that the law was a learned profession in which the bungler was equally as dangerous as the knave; that vast estates were conveyed by will, and how easily by mistake or design a lawyer could destroy the testator's most sacred wish; he could rob the helpless of his right, the dependent of his inheritance, or the charitable institution of its patron's aid, and all this without color of criminal wrong. The law, it asserted, punished with relentless hand the man who blundered in positions of trust; it punished with awful penalties the man who blundered in the heat of passion, but it had no censure, no sting, no scourge for the man who blundered at the bedside of the dying.

Thus was Robert Dalton's fame as a lawyer damned into the veriest blackness.

## III

ON a certain bleak Thursday of January, Randolph Mason sat in his office, absorbed in the study of a great map which was spread out on his table. The day was so dark and lowering that the electric light above the table had been turned on. Presently the door opened and the little clerk Parks looked in. He watched the lawyer for a few moments intently ; then he withdrew his head. A few minutes later, the door again opened and a woman entered, and closed it behind her. She stopped and looked at the counsellor, bending over his map. The picture was not a pleasant one. The man's streaked, gray hair was rumpled, and his heavy-muscled face under the glare of the light was rather more brutal than otherwise. Then she crossed to the table and threw a newspaper down on the map.

"Will you kindly read that marked paragraph?" she said.

Randolph Mason looked up. For a moment he did not recall the woman, her face was so very white. Then he recognized his client, Mrs. Van Bartan.

"You will pardon me, madam," he said, "I am deeply engaged. Kindly come here to-morrow."

"I have to regret," said the woman, "that I ever came here at all. Will you please read that paragraph?" And she put her finger down on the newspaper.

The counsellor looked at the paper.

"We notice by to-day's *Herald*," it ran, "that Robert Dalton, Esq., has sailed for Japan, where it is said he will become a legal instructor in one of the national universities. Mr. Dalton, it will be remembered, is the attorney whose stupid blunder invalidated the Van Bartan will, and it is to be hoped that he will prove more efficient in the service of the Mikado. The bar of the Virginias cannot be said to regret Mr. Dalton's departure. He was grossly incompetent, and just such men bring the legal profession into disrepute."

"What of all this?" said Mason. "You obtained what you desired. Why do you harass me with this nonsense?"

"I obtained it," repeated the woman, bitterly. "Yes, thanks to your devilish ingenuity, I obtained it, but at what a cost! I have the money, but it is daubed over with the blood of a man's heart. It has the price of a man's honor stamped on the face of every coin. I hate it all. Everything I see, every thread that touches me, taunts me with the shame of such a sacrifice."

The woman's voice was firm, but her figure trembled like a tense wire.

"Madam," said Randolph Mason, "you annoy me. I have no interest in this drivel."

"No interest in it?" cried the woman. "You, you have no interest in it? Was it not you who did it? You and the devil himself? You concocted this plan. You said go to him, and tell him, and he would know what to do. Your fiendish ingenuity saw what would result, but you did not tell me. You did not tell me that this man would be compelled to rip his life in two like a cloth to save me, and that he would do it. If I had known

this, do you suppose that I would have gone on for a moment? Do you suppose that I wanted wealth, or ease, or luxury, at the cost of a man's hope and fame and honor? I tell you, you miserable blunderer, this thing cost too much."

"Chatter," said Mason, rising.

"Chatter!" cried the woman, beating her hands on the table. "Do you call this chatter? I charge you,—do you hear me, I charge you with the ruin of this man's life."

"Madam," said Randolph Mason, "the vice of your error lies in the fact that you should have consulted a priest. I am not concerned with the nonsense of emotion."

Then he turned abruptly and walked out of the room.

# ONCE IN JEOPARDY

(See *Amer. and Eng. Enc. of Law*, vol. ii., page 926, and the cases there discussed ; see also State *vs.* Richardson, S.C. 35 Lawyers' Reports Annotated, 238, and cases there cited ; also Constitution of the United States, Art. 5, and the Constitution of West Virginia, Art. 3, Sec. 5.)

# ONCE IN JEOPARDY

## I

THE sheriff stopped on the steps of the court-house, pushed his straw hat back from his forehead, moved his eyeglasses up a little closer to his fat face, and began to contemplate the limits of his official jurisdiction, with the air of one about to deduce a law.

The little county seat on Tug River slept in a pocket. Behind it and on every side except the river were great mountains, half-hidden by a gigantic cloak of fog. On the opposite side, from the great coal plants of the Norfolk and Western Railroad a counter-canopy of smoke arose, dense and voluminous, and stretched itself like a black hand out over the town and across to the fog of the mountain. Man, it

seemed, had conspired with nature to cover up and hide the town of Welch.

"Strange," drawled the sheriff, "strange, that a white man should be willing to leave a paradise like this, and with river water in his stomach too." Then he chuckled comfortably.

The sheriff of the county of McDowell was all right. He represented the entire machinery of the law obtaining south of Tug River, and he carried the momentous responsibility with the languid grace of a bank clerk at a charity german.

The sheriff was a Virginian. But, marvel of marvels, he was a Virginian without a title. He was plain W. M. Carter. The statement is not quite accurate. Among the boys he was "White" Carter. But he was no "colonel" and no "major," and he gloried in the distinction and guarded it well. The sheriff was a comfortably fat man and most genial. His eyes were round, blue, and dreamy, and he never hurried. He was never abrupt or a jarring element. He slipped easily into any position and filled it up without a ripple, as

water slips in and fills up the outlines of a vessel.

Still the sheriff was all right. When he looked out of his dreamy blue eyes through his rimless nose glasses at a negro miner who had used his razor as an adjunct to an argument, and mildly requested the negro to accompany him to the confines of the county jail, it was as certain as the advent of death that the negro would obey, and obey without comment. And when the sheriff mounted his "murky dun" horse and passed up into the mountains for the purpose of inducing a moonshiner to come down to civilization and submit his rights to the decision of a judicial tribunal, it was a matter of familiar history that the moonshiner always came.

To the inquiring stranger, no man seemed a native of McDowell.

This impression arose from the fact that the stranger adhered to the railroad and the coal towns which sprang up in its wake, and in these every man came from somewhere. The railroad had brought in the coal companies, and the coal companies had brought in the negroes,

and thus towns sprang into existence, and the usual rough, expeditious methods of civilization began. Then came the politician and the adventurer, and mixed in merrily, and from that time forth the county of McDowell was industrial and Republican, and everything "went."

But a few years back, before the section hands on the Norfolk and Western Railroad cut through from the county of Mercer, there was a population in McDowell that was not Republican, and that did not "go." They were long-limbed, indolent, and "handy men" in a fight. They made corn whiskey when they pleased, and voted the Democratic ticket when they saw fit, and accounted to no one. The revenue officer came, and looked up at the great mountains covered with the giant oaks of a century, concluded that the laws were not being violated, and so reported to the Government. It was vastly more comfortable than going up into these same mountains not to come down at all, or maybe to come down with a squirrel bullet under the ribs. In his day and generation the revenue officer was a wise man.

Here the citizen was born as it happened, lived as he could, and died as the necessity arose, and the outside world neither knew nor cared nor concerned itself with it. These were not bad people. Morally they were as good as the sun warmed. Their life bred no shams. If they loved each other, they lived together and were happy, and if they hated each other, they fought it out. The feud has been usually overdrawn. It existed in truth, but it rarely resulted in anything more than a "fist fight" at a grist mill, but when it grew serious, it grew very serious indeed. The mountaineer always shot to kill. He was no man of half measures; it was a free, open, breezy war, and perhaps it was as healthy fighting as any. At his worst, the native moonshiner was a better man than the imported miner at his best. Up in the fog of the mountains men were killed; down in the smoke of the coke ovens they were murdered; and between the two words there is a distinction as big as the honor of a people.

The "killer" was common in McDowell, but the suicide was not, perhaps because men

rarely take their own lives in the mountains. It is a trick of jaded civilization obtaining in congested cities, unknown and unpractised by the dwellers among the hills. Men died in the mountains, but by the hand of others.

So the sheriff was puzzled. That morning the body of Brown Hirst, manager of the Octagon Coal Company, had been picked up in the muddy waters of Tug River, just below the bridge. Above, on the railing of the bridge, his coat and vest had been found, folded and apparently laid carefully over a girder. The bridge was very high above the rocky stream, and the body of the man was badly crushed—almost beyond recognition. The man had evidently jumped from the bridge with the deliberate intention of taking his own life. All this the sheriff had heard as he rode into the town. But rumors are lurid, the sheriff knew, and he concluded to go at once to the prosecuting attorney. He wanted the tale straight from some one who could pry the facts free from the fiction. On the steps of the court-house the sheriff had paused for a moment and made some observations to himself. But a crowd

was beginning to gather in the street below, and the sheriff, being fully aware that this portended a demand for his opinion and not being pleased to express one, he turned abruptly and passed into the court-house.

The man of order walked leisurely down the hall to the office of the prosecuting attorney and entered. A thin, red-haired girl was pounding a typewriter with the energy of a two-horse-power engine. Conventionalities were abbreviated in McDowell. The sheriff sauntered in.

"Where 's Jeb?" he drawled.

The red-haired girl paused for a moment and jerked her thumb over her shoulder. "In there," she said, "busy." Then she went on.

Miss McFadden was an economist; she wasted no words. The sheriff threw open the door, and walked into the private office. The prosecuting attorney turned around from the window.

"Hello, White!" he said, "you are the very man I want."

"Which indicates," drawled the sheriff,

" that you are a young person of great discernment."

" When one needs horse sense," said the prosecuting attorney, " your acquaintance is valuable. At other times it is a luxury."

" Together," observed the sheriff, mildly, " we create a sort of equo-asinus intellectual atmosphere, I suppose."

The attorney took up a chair and placed it by the window.

" Sit there," he said, " and listen." Then he closed the door, and, crossing the room, began to open the safe by his desk.

The sheriff sat down meekly and turned his dreamy blue eyes on the young lawyer.

The prosecuting attorney of the county of McDowell was an imported article. Like the ancient wise men, he came from the East, but the manner of his coming was not quite that of the early sages. The sheriff had come up from the hills of Virginia, while the prosecuting attorney had come up from the sea. Not that this young scion of the law was a sailor or the son of a sailor, but on a certain summer afternoon at a certain fashionable resort, Fate

suddenly threw away the toys with which she had been amusing him, and he immediately realized that the world was a common treadmill instead of a breezy French drag.

It was a stiff shock, but the spine of young Mr. Huron was good, and instead of stepping off the pier, at ten o'clock of that same night he was demonstrating to a certain wealthy senator who had large coal interests in West Virginia that it would be the part of no inconsiderable wisdom to send a bright young fellow with a legal education down into this great mining region for the purpose of investigating the land titles, and for the purpose of keeping an eye on the industries generally, and, as it is said in the law, "for other purposes."

The old senator was by no means blind to the very slight efficiency of raw material, but he had a heart hidden away under his coat, and at thirty minutes past eleven he was convinced. So J. E. B. Huron came into the county of McDowell, nailed up his shingle, and stepped down into the *melée*.

The opening chapters of his legal career were blue-tinted histories, but the material in

the backbone of young Mr. Huron was splendid material, and he remained. The perception of this man of the law was no dwarfish growth, and he used it like the wise. McDowell was Republican by 1600, and "White" Carter was big boss; *post hoc ergo propter hoc.* J. E. B. Huron was a Republican of ancient affiliation, and more specifically he was right-hand man to White Carter. This wisdom was not without its reward. The convention that nominated Carter for sheriff, nominated Huron for prosecuting attorney, and the big boss pulled his man through in spite of splits, and splits, and independent tickets. The prosecuting attorney was a handsome young fellow with a good level head. He knew the value of the sheriff, and he held to him.

The prosecuting attorney took some papers from the safe, drew up a chair, and sat down by the sheriff.

"You have heard of Hirst's suicide?" he said.

The sheriff nodded. "All but the ante-mortem note," he drawled.

The prosecuting attorney smiled. "How did you know there was a note?"

" Jeb," said the sheriff, " it is a part of the etiquette of suicide. No man effects his exit without a parting word. It would be bad form, Jeb, frightfully bad form."

" So you guessed it ? "

" No," replied the sheriff, wearily, " my gray matter was allowed me for the purpose of utility. I concluded."

The prosecuting attorney selected a letter from the package of papers and passed it over to the sheriff. That official examined the envelope carefully, then he slowly opened it and spread the enclosed letter out on the desk before him.

" Octagon Coal Company," he read slowly, " Miners and Shippers of Coal and Coke, Welch, West Virginia. Robert Gilmore, President. Brown Hirst, Business Manager. All agreements are contingent upon strikes, accidents, and other delays unavoidable or beyond our control."

The sheriff paused for a moment. " Written at the office," he observed, " with a pen, on the company's stationery."

The guardian of order removed his eye-

glasses, wiped them carefully, replaced them on his nose, and continued:

"The officers of the law are informed that I, Brown Hirst, have taken my own life, deliberately and at a time when I am in the full possession of my faculties. My reasons for so doing are of no importance to the law, and are accordingly withheld. This statement is made merely for the purpose of preventing any inference of murder, and for no other purpose.—Brown Hirst."

The sheriff replaced the letter in its envelope.

"That," he said, "is a sensible communication. By the very highest flame on the altar of folly, it is an exceedingly sensible communication. Where did you find it?"

"The coat and vest," replied the lawyer, "were found lying carefully folded over the railing of the bridge. This letter was in the breast pocket of the coat. Hirst evidently went about his death with great deliberation. Still, I see no motive for suicide."

"Jeb," drawled the sheriff, "you are 'long' on motives. Everything must have a motive stamped in red ink on its face. Can't you

allow an obscure citizen to change his permanent residence and retain his reasons? The gentleman has said in his communication that his reasons are of no moment to the law. Can't you take the gentleman's word for it? It is n't courteous, Jeb. By the way, where is the corpse of the decedent?"

"Within the sacred jurisdiction of the coroner."

"And the medical fraternity?" inquired the sheriff.

"Doctor Hart is over in Jacktown putting the finishing touches, it is said, on old Pap Dolan, so the coroner called in a miracle doctor from Cincinnati."

The sheriff chuckled. "Miracle doctor," he drawled, "is good—is very good."

The prosecuting attorney assumed the air of an instructor.

"Healers," he began, "may be set down, for the purposes of a proper classification, under three great heads or grand divisions, namely, 'yarb doctors,' 'old-line practitioners,' and 'miracle doctors.' Under the first class may be grouped those persons who seek

to effect cures by means of the virtues of shrubbery, as well as that vast army of rural healers known along the watershed of the Alleghanies as 'bleeders' and 'steamers.' Under the second great division are included those grave professional persons supposed to be learned in the mysteries of the human economy, who, for a fixed consideration, guess at the ill, and thrust in a chemical; while the third and final division is composed of those mysterious healers who affect to thwart dissolution by means of marvellous knowledge or marvellous skill peculiar to themselves.

"The species of the first grand division infest all that great tract of country bounded by a timber line. The second great class obtains in the cities and villages, and affect buggies, drugs, and sombre dress. The third class is a by-product of congested civilization, and begins usually with a patent lotion, and ends usually with a hospital."

White Carter waved his fat hand. "But, if your honor, please," he interrupted, "what did the miracle doctor say?"

"He said," replied the prosecuting attor-

ney, "that Brown Hirst was a compound fracture from the sustentaculum tali to the tripod of Haller; and from the tripod of Haller to the corpus callossum, he was a simple fracture."

"Horrible," drawled the sheriff.

"And he said further," continued the man of the law, "that the suiciding decedent was probably afflicted with some species of psychical neurosis."

"*Domine miserere!*" murmured the guardian of order.

"So the travelling Æsculapius testified, and as the coroner was quite unable to spell the craft terms, he simply wrote down in the record that Doctor Leon Dupey of Cincinnati, after a careful examination, had pronounced Brown Hirst dead, which was far less prolix and entirely true."

"That coroner," observed White Carter, "should be United States Senator from Kansas."

Huron took up the note and put it with the other papers.

"I judge this to be a plain case of suicide,"

he said. "I have carefully compared the writing with these letters. It is certainly Brown Hirst's writing. Still, men do not act without a motive, and I see no justifiable motive."

"Well," said the sheriff, "I happen to know that financially the Octagon Coal Company is somewhat 'groggy.' How will that answer for a motive *ad interim?* Or, as the sensible would say, in the meantime?"

"Good," said the prosecuting attorney. Then he took a pencil from his pocket, and wrote on the back of the decedent's letter: "Suicide. Motive—business depression," and replaced the papers in the safe.

The sheriff arose. "The legend you have subscribed is probably correct," he drawled, "but the ways of Providence are varied and mystic, and I think I shall make some observations in my own right." Then he went out.

## II

"IT is quite plain," said Randolph Mason, "that you have fallen into the usual blunder of the common rogue. If you had wished to rob the insurance companies, you could easily have accomplished your end without perpetrating this crime, and thus assume the hazard of discovery and criminal prosecution."

Robert Gilmore looked sharply at the counsellor.

"You mean that I am seeking advice late?"

"Precisely," said Mason. "It is the characteristic error of the witless."

"Well," observed the coal operator, "in desperate positions one usually relies on one's-self; confederates are dangerous, and usually expert advice is difficult to obtain." Then he laughed. "I could not advertise for sealed

bids on how the thing should be done. I did the best possible under the circumstances, and I rather thought that I had made a clean job of it."

"That delusion," muttered Mason, "is common with the amateur. Indeed, it is the mark of him. This killing was useless. You could have gotten on as well without it."

The keen, gray eyes of Robert Gilmore twinkled. "I should be interested to know how?" he said.

"At this late hour," answered Randolph Mason, "my advice upon that point can be of no importance. Suggestions after the fact are of little interest and of no value. You have now to consider some method by which you may place yourself permanently beyond the reach of the law. This is no problem of slight moment, and, in order to meet it properly, I must know the details of this blundering business."

The coal operator's face grew grave and thoughtful. "I presume," he began, "that the priest and the attorney are accustomed to require details and accurate confessions. I am

president of the Octagon Coal Company, as I have said, and reside in the city of Philadelphia, where I have been engaged in active business for several years. My life beyond that time cannot be a matter of any special importance. I may add, however, that I had been engaged with a foreign company as a fire insurance adjuster for the State of Illinois for some years before coming to the East. It was while acting as an adjuster of losses that I first met with Brown Hirst.

" An unusually large fire occurred in one of the suburban towns near Chicago, destroying almost an entire block, and I was sent out by my company to adjust the loss. Upon my arrival in the town I found what I believed to be evidence of a gigantic fraud. The block had been leased for a year by one John Hall for the purpose of doing a mammoth general business with a great number of different departments, and almost before Hall had opened his doors to the public this fire occurred. There was no explanation of how the fire originated. When first noticed by the police, about three o'clock in the morning, the build-

ing was blazing fiercely in a dozen places, and under such headway as to be impossible to control. The local fire department was unable to prevent the loss of the building, but fortunately a heavy rainstorm set in and prevented a total loss of the stock.

"In conversation with Hall, I discovered that not one domestic company had a dollar on the building or its stock, but that the entire insurance was carried in my company and a number of London companies usually associated with it, and for whom I acted as general adjuster. This was of itself a suspicious circumstance, since the insured would not be subject to the inquisition of numberless representatives of convenient local companies, and in a legal fight would have the prejudice against a remote company in his favor, and, further, he would have but one man to deal with.

"I observed immediately that Hall was a person of much shrewdness. He talked little, but what he had to say was exceedingly free from any suggestion of concealment or obscurity. When I came to examine the unburned

stock, my suspicions were confirmed. It was composed entirely of bulky merchandise, evidently selected with a view to a fire.

"The manner of its arrangement in the building was exceedingly suspicious. The boxes had been piled up before the windows in such a manner as to prevent the firemen from entering the building even after the iron bars had been cut, and the arrangement was such that when the fire should gain headway and the windows be opened, the position of the boxes would act as a sort of flue and thereby greatly assist the fire. It was all exceedingly well planned, and if the building had been entirely consumed, detection would have been impossible. Nothing could have prevented this but the unforeseen storm, and had it not occurred just when it did, Hall's scheme would have proved a masterpiece of its kind.

"I gave the public no intimation of my conclusions concerning the incendiary nature of the fire, but when the investigation was concluded, I took Hall to the hotel, and told him frankly that my company would not pay the loss, as it was quite evident that it was all a

shrewdly arranged scheme to defraud. I pointed out the suspicious circumstances, and the irresistible conclusion that flowed from them, and said plainly that Hall would do well to escape criminal prosecution.

" To my utter astonishment, the man expressed no surprise whatever. When I had finished, he asked me a few searching questions intended to determine the thoroughness of my investigation, and when he was satisfied upon that point, he drew his chair up near to the table at which I was seated, and quietly proposed to divide the insurance if I would join with him and make the proper sort of report to my company.

" In handling this proposition, Hall was marvellously skilful. He assumed to treat the matter purely as a business arrangement. He said that the loss, although big to us, was a very small matter to the wealthy companies which I represented, and would not be felt by them, and would cause no man any appreciable hurt; that he had gone to infinite pains and no little expense to perfect his plan, and nothing but the unfortunate storm could have pre-

vented its complete success; that he had never intended to divide with any one, but accident against which he could not guard had placed me in a position to secure a portion of the very considerable sum which he had gone to so much trouble and expense to obtain, and, appreciating this new necessity, he was quite willing to allow me an equal division of the gain. At no time during his entire conversation was there any suggestion of danger or any allusion to any risk, criminal or otherwise.

"It is unnecessary, I judge, to weary you with further details. Under the remarkable handling of this man, the element of substantial wrong seemed to disappear from the transaction, and the result was that I finally consented to join with him. He claimed two hundred thousand dollars. I reported to the company a complete loss, but advised a settlement at not more than one half of the sum claimed. This finally led to an adjustment at about one hundred and twenty thousand dollars, without the least suspicion of a community of interests between us.

"It would not be quite true to assume that

I easily fell in with Hall's plan, although in point of time it would seem so. Financially, I was in a bad way; from childhood I had been poor; always poor. In money matters, things invariably went wrong. Every hazard I had taken, every speculation in which I had entered, had always lost, no matter how substantial it seemed. At this time I was rather desperate, I presume. At any rate, I joined with the scheme, and it succeeded without a jar.

"Thus I came to know Brown Hirst under his alias. We divided the money and deposited it with a trust company in Philadelphia until such time as we might safely join in some one of the numerous ventures which Brown Hirst was continually planning. But he was no dreamer, this Hirst. He knew fully the great virtue of deliberation, and insisted that I remain with the insurance company for at least a year, and then secure employment with another company on some reasonable pretext, and then by some error be discharged from this company, and if possible join with another, until finally I should drift out of the

business without being subject to speculative comment.

" These suggestions of Hirst I followed to the letter, and they resulted as he anticipated. I had now great confidence in the ability of this remarkable man. The details of his plans were as accurate as the pieces of a machine, and they seemed never capable of failure."

The coal operator paused and rested his hands on the arms of his chair.

" Even now," he said, " I consider Brown Hirst to have been the ablest man I ever saw."

Randolph Mason was silent. His face indicated rather more of weariness than of interest. Perhaps the story in its substance was very old to him.

" On the first day of September, 1893, I joined Brown Hirst in Philadelphia, and here he unfolded a number of gigantic plans, among others one for defrauding life insurance companies, which we finally decided to attempt. I do not now recall that I felt any real repugnance to the moral obliquity of these ventures. The master mind of Hirst seemed to sweep out any moral consideration, by simply ignoring it

utterly. When Hirst planned, it was all business, and, according to the ethics of business, quite as right as any. Indeed, the man was so phenomenally successful where I had always failed, that I never once dreamed of objecting to any plan which he deemed wise.

" As I have said, Brown Hirst was as practical as a blue print. He used to assert that of all vices haste was the most abominable, and that before seeking to effect our venture it would be the part of wisdom to engage in some legitimate business for a few years in order to establish a reputation as a substantial business firm. Then our plans would be rid of the suggestion of adventurers. Besides, it would give us financial rating and substantial standing in the community in which we should begin our fraudulent operations, and, as well, in the meantime, we could prepare our motives, which, Hirst asserted, should always be furnished ready-made to the public when investigation began.

We accordingly determined to purchase and operate a coal plant in West Virginia. This business was suited to our purpose rather better

than any other, because men were continually coming and going in this business. Unknown companies were formed in remote cities and operated merely with an agent. The firm was rarely investigated to any very great degree, if it promptly met its obligations, and there being little opportunity for fraud, a good business standing could be easily secured by any manager who was reasonably expeditious in his transactions.

"We secured a charter for the Octagon Coal Company, purchased a plant on the Norfolk and Western Railroad in the county of McDowell, and began to operate with Brown Hirst as manager and myself president of the presumed Philadelphia company.

"Hirst was, as I have said, a man of fine business sense, and very shortly began to make money. We enlarged the plant, and soon came to be considered a firm of importance. When it grew apparent that we could succeed at a legitimate business, I began to urge Hirst to abandon his dangerous venture entirely, and devote his splendid abilities to the development of the coal industry; but he

only laughed, and bade me remember that all this required work, and it was not his intention to spend his life at work."

"Sir," said Randolph Mason, interrupting, "you are overlooking the important matter in your disclosure. What was this insurance scheme?"

"Oh, yes," said the coal operator, "I was coming to that. It was our plan to secure heavy insurance on the life of Hirst, making his wife the beneficiary, and later have him disappear under circumstances indicating suicide."

"That plan," said Mason, drawing down the heavy muscles of his mouth, "is ancient, and infantile, and trite; worthy of blunderers —children and blunderers."

Gilmore looked at the lawyer for a moment critically, then he continued. "I presume the scheme is not new, but I rather think Hirst's plan for carrying it into effect was somewhat novel and unusually practical. At the time Hirst proposed this scheme he was unmarried, and, as a cold business proposition, he said that I should select some woman—any woman

agreeable to me, whom I should like as a wife, then he would marry her, insure his life for her benefit, make his exit, and afterwards I should marry the woman and send half of the insurance money to him in Spain or Italy, where he had determined to take up his permanent residence.

" He urged that it would be best to keep the woman totally ignorant of our plan, so that if anything should go wrong, she could not be implicated in a conspiracy, and, therefore, could not be prevented from obtaining the insurance as, she being the sole beneficiary and no fraud on her part being possible, any suspected or even assured fraud on my part would not void the policy payable to her, provided he, Hirst, could not be found within seven years.

" Hence, two considerations were necessary in selecting the woman. First, she must be so situated as to reduce suspicion of her to the minimum. And, second, she must be one whom I could marry as Hirst's widow and thereby obtain the money. This part of the plan was allotted to me to complete. You

will now see with what a remarkable man I was associated, and how little regard he entertained for the customs of human society.

" In leaguing myself with this man's fortune I blundered fatally. My nature was entirely different. I could not shut out the natural emotions. I could not crowd out the human in me. I was no calculating machine like this man Hirst, and in carrying out my portion of the venture I made a frightful mistake.

" I am not now going into the details of that mistake. It will be sufficient for the purposes of this interview to say that the woman whom Hirst finally married was a good woman, the daughter of a venerable churchman residing in one of the suburban towns of Philadelphia,— such a good woman that no sooner had the ceremony taken place than I began to regret having associated her with such a cold-blooded villain as Brown Hirst, and as the days ran by, that regret grew into a very passion of remorse."

The man paused for a moment, raised his elbows up on the arms of his chair and locked his fingers.

" I guess it was a sort of Providential judgment," he continued, " if such things are supposed to be in this practical time. I avoided the woman as far as possible, and strove to conceal my terrible regret, but it was quite useless. Hirst knew almost before I realized the feeling myself, and harshly bade me remember that this was business, and no matter of maudlin sentiment. He had no feeling whatever for the woman, and if I could wait for a little time the plan would very shortly give her to me. He warned me against what he was pleased to call ' nonsense,' and I must admit that the powerful personality of this man forced me into a sort of stolid subjection to his will. But the feeling for the woman remained, and I hated Hirst."

Randolph Mason put out his hand as though to interrupt the speaker, but, appearing to reconsider, suddenly withdrew it and nodded to the coal operator to continue. The young man took no notice of the interruption.

" Hirst," he went on, " like the master spirit that he was, proceeded to put the details of his plan into operation. From time to time

he applied to the best companies in the country for insurance, and as he was considered a good risk, a man of fine physique, and in charge of a substantial business, he presently secured about two hundred thousand dollars on his life. These policies he carried for two years in order to avoid the suicide clause, and in order to render them as nearly incontestable as possible.

"Finally, every arrangement having been completed, the time drew near when Brown Hirst determined to make the final movement in his scheme. But during these two years my hate of this man had not been idle. I don't know just what possessed me. I had no good reason to hate him. It was all, as he said, a business matter, — details in a pure business matter. But I did hate him, and, unconsciously, one does not know just how, I determined to take a part in his plan. I determined to make the play real. This determination was no sudden resolve; it seemed rather to evolve slowly until it finally became a fixed purpose. The motive for the supposed suicide, Hirst had by no means overlooked. It

was to be impending financial ruin, and during the past year immediately preceding his death Brown Hirst drew great sums from the business, and finally mortgaged and remortgaged the entire coal plant and applied the money to the payment of his heavy insurance, so that at the time of his disappearance the business would be in a state of financial collapse, and the motive for his rash deed would be adequate and thoroughly apparent.

"During all this time, Hirst operated in McDowell near the county seat of Welch, his wife remaining for the most part with her father, while I maintained a city office in Philadelphia. On the day set apart for the disappearance of Brown Hirst, there was a stockholders' meeting of our company at its principal office in West Virginia. It was a sham, but it was rumored that the purpose of this meeting was to discuss some measure that would relieve our business from impending ruin. This was the purpose made public. The real purpose was to account for my presence in McDowell. It was a part of Hirst's plan that I should remain behind after his dis-

appearance in order to see that everything was properly arranged, and then take a night train for the East.

" The preliminary details of that night's work were splendidly managed. We met together at the office of the company. Here Hirst wrote a letter explaining that he was about to take his own life, and placed it in the pocket of his coat.

" Then he took a bundle of men's clothing, in which he intended to make his escape from the country. This bundle consisted of a grimy coat such as the ordinary miner wears, in the pockets of which he had placed a package of bank notes, a pocket-book containing a New York draft and a memorandum of his insurance policies.

" The trousers, shoes, and other articles of this disguise Hirst wore when he left the office, it being his intention to leave his usual coat and vest on the bridge over Tug River, as evidence of the suicide, and then, assuming the remainder of his disguise, slip out to Cincinnati on the night freight.

" From the office we went directly to the

bridge over Tug River, for the reason, as Brown Hirst always maintained, that in order to leave perfect circumstantial evidence it was absolutely necessary to actually do as far as possible the things which one desired the public to believe one had done.

" It was perhaps two o'clock, and very dark and wet. It had been raining for almost a week. This was largely in our favor, since the river at flood is deep and rapid, and a body lost in it when the water was running high would not probably be recovered at all, as we had noticed was the case with lumbermen not infrequently drowned; hence we had selected the time of heaviest rains in this region in order that the loss of the body should not seem a matter of unusual moment.

" It might be as well to explain that when Tug River is swollen by rains its channel beneath the bridge is very deep and rapid nearest its east shore, while near the west shore its bed is higher and covered with immense bowlders; thus anything thrown into this river on its east side would probably be carried away and lost, while if dropped from the bridge on the west

side it would probably lodge among the bowlders, and remain after the high water had subsided.

" As I have said, it was very dark, and the roar of the waters was something frightful, but we were quite familiar with the bridge, and, becoming accustomed to the darkness, presently came to see sufficiently for our purposes.

" Hirst went directly to the span of the bridge nearest the east shore, and, removing his coat and vest, placed them across one of the girders. Then he began to undo the bundle in order to put on the miner's clothing which he had brought with him.

" This was my opportunity, and I suggested that we first walk to the other side in order to make sure that the bridge was entirely clear. He immediately put down the bundle and came up to me. I do not now know whether there was in his mind any trace of suspicion, but I do know that at this suggestion the man seized my arm and tried to look into my face, and I am certain that had it been light he would have discovered the treachery which I was contemplating. But it was dark, and the man

said nothing except to curse the night. He was exceedingly profane, this Hirst, and as we walked the length of the bridge, he holding my arm and damning the night in half whispers, I somehow felt that this man appreciated in a vague way the doom that was impending. But I presume that this was simply an impression arising from the intense strain under which I was laboring.

"As we were about to return, I pointed to the white surf, breaking on the bowlders below. The man, still holding my arm, stopped, leaned over the low railing, and peered down into the water. This was the position into which I had hoped to trap him, and, wrenching my arm loose suddenly, I struck him heavily between the shoulders. The man plunged forward over the railing, clutching wildly at the air, but he uttered no cry, and his body whirled downward into the blackness below.

"I clung to the railing and strove to see where the body would strike, but it was folly. The bridge was high above the rough stream, and I heard only the dull splash that told of his death."

The eyes of the coal operator seemed to stretch at the corners, and a dull gray spread over his face.

"I should like to be rid of that scene," he continued after a moment. "It is frightfully vivid. Every detail of it seems to have been photographed on my brain, and it runs before me like the pictures in a vitascope. Men sometimes forget such things, it is said, but, in the name of Heaven, how? Why, I can see him any moment in the dark. I can see his strained white face mad with horror, I can see his clutching hands, I can feel in my own throat just how the terror of death choked in his, and I know, I know——"

Randolph Mason struck his clenched fist heavily on the table. "Sir," he said sharply, "you will kindly omit this drivel. Give me the facts just as they occurred. You may reserve your melodrama for the purposes of a copyright."

Gilmore started and threw up his head as though some one had suddenly dashed ice-water in his face. He put his hand up to his forehead and pressed his fingers hard against

the skin; then he straightened in his chair and seemed to gain his self-control.

" Well," he went on, " I went back to the east side of the bridge, threw the bundle over into the river, slipped through to the Chesapeake and Ohio on one of the night freights, and by noon of the same day I was in Philadelphia.

" That afternoon the city office was advised of Brown Hirst's suicide. We immediately wired the prosecuting attorney for details, and were informed that he had jumped from the bridge, leaving a note in his pocket which explained that he had taken his own life. The body was shipped to Philadelphia, as his wife directed. Almost immediately I began to close the affairs of the Octagon Coal Company, and very shortly after the funeral I called upon Mrs. Hirst in order to take the preliminary steps looking toward the collection of her husband's insurance.

" Here my plan struck and went to pieces like a vapor. The wife of Brown Hirst was a good woman, and I had failed to foresee what she would do under circumstances of this

nature. To my utter astonishment, she informed me that the representatives of the insurance companies had been to see her and had asked time in which to investigate the case, and that she had gladly concurred in their request. And then, like a woman, she declared that there was no reason why her husband should commit suicide, and that she did not believe he had done so, but that, if he had deliberately taken his own life, she would not touch one dollar of the insurance money; that she would have nothing bought with life. If it could be shown that her husband was murdered, as she believed, then she saw no reason why she should not claim the insurance; but if, on the other hand, it proved true that he had planned to defraud the life insurance company for her benefit, and, pursuant to that awful plan, had hurled himself into eternity, then she would starve in an almshouse before she would touch a penny of the money.

"This statement struck me with the crushing power of an axe stroke. The world seemed to pass out from under me. I saw every hope of the future vanish. I realized in a flash, as

one is said to do at the grave's edge, in what a prodigious error I had been engaged."

There must have been some suggestion of annoyance on the counsellor's face, for the coal operator stopped short and moved uneasily in his chair.

"I was about to forget your instructions," he explained, with a shade of apology in his voice; "it is rather hard to crowd one's emotions out of a desperate, personal narrative like this, although, of course, it is all nonsense to rant about it.

"To be brief, I was totally unable to shake this woman's purpose, and I returned to the city knowing that a tireless investigation was about to begin. I have not waited to see the result of this investigation. I know that the insurance companies and this unusual woman will leave no stone unturned in order to discover just how Hirst came to his death, and I am not fool enough to think that they will eventually fail. I don't believe any of the bosh about murder crying from the ground, but I am entirely convinced that it is almost impossible to cover a crime so that human in-

genuity cannot trail down the man who committed it.

" I judge that I was not intended for business of this sort. I cannot fight out in good order. With me a retreat is a rout. I have abandoned everything. I have thrown away every plan. I am trying now to save myself from the hangman, or at least the penitentiary. I have not waited to be caught; I have come to you at once."

The man seemed to relax and settle back in his chair.

" Now," he added, with the utter dependence of a patient stretched upon the table of the surgeon, " you must save me."

The eyes of Randolph Mason flattened as though they were being pressed down from above, and the lines of his face deepened and widened into rugged furrows.

" There are two methods of evading the law," he said. " The escape *ipso jure* planned before the fact; and the escape *ipso jure* after the fact. The first is a matter of no great difficulty, and may easily be prepared by any man reasonably conversant with the law of the place

of his intended act, and if skilfully arranged need contain no element of hazard whatever. The latter is far more difficult, and must be handled with some care in order to reduce the element of peril to its minimum. In the first, one constructs the facts to suit the defects in the law, and if executed with any degree of intelligence, the criminal actor has nothing whatever to fear, and the law is as harmless as a painted devil.

"In the latter, the expert must take the facts as circumstance and the blundering criminal agent have made them, and strive to adapt these prepared facts to the law as it stands, which is a far more difficult proceeding, and not infrequently attended with disastrous results. Hence the skill of certain criminal lawyers, and the long technical legal battles with which the books are crowded.

"As for you, sir, the scheme in which you have been an actor was abominably planned, and more abominably executed. The most drivelling intelligence should have seen peril staring out from every infantile move made by you and this stupendous blunderer Hirst. You

have taken an old, time-worn plan, teeming with dangers, and, not content with its frightful hazards, you and this witless Hirst have added one complicated peril after another until you have finally constructed a masterpiece of idiocy that in its complex nonsense approaches the sublime.

"I wonder, sir, that you have not gone to the authorities and requested an execution. It would be a fitting sequel to your atrocious errors."

The face of the counsellor was ugly with a sneer.

"Your seeking counsel at once stands out as your one intelligent act. It is marvellous discretion, judged by your narrative; marvellous and unexpected. Let us hope that your period of mental aberration is past."

Then he arose and stood looking down at the man who, like many another, had striven to throw the machinery of human justice out of its proper gear, and had simply succeeded in tangling himself in its complicated wheels.

"In order to save you now," said Randolph Mason, "we must move quickly. These great

insurance companies have the ablest detective service of the world. With such a bungle as you have made, it is merely a question of a few weeks until they will succeed in fastening this murder upon you, not directly perhaps, but sufficiently to warrant your arrest, and then you must take your hazards with a jury. The man who to-day hopes to cover his crime well enough to baffle the keen and tireless search of a great life insurance company must be governed by something vastly nearer to an intelligence than that upon which you and the decedent Hirst depended.

"At this stage of your blunder there are but two ways by which it is possible to put you absolutely beyond the reach of the law. Death is one way, and we will pass that. The other I am now going to bring to your aid. With it the greatest care and haste are vital. At nine to-night you must be here prepared to put yourself wholly in my hands. I shall have every arrangement complete by that time."

Mason stopped short, and put his hand down heavily upon the table.

"Now, sir," he said, bluntly, "it will be

entirely useless for me to attempt the drastic measures necessary in your case unless you are prepared to act under my fingers like a machine. Can you do that ?"

"Yes," said the man, wiping the perspiration from his face.

"Then," said Randolph Mason, opening the door of his private office, "go down to your hotel and sleep; and if you please, sir, do not think, or, to be more accurate, do not attempt to think. Your thoughts, as has been demonstrated, are of no value to you, and I assure you, sir, they will be quite useless to me."

Then he closed the door after the departing criminal and went back to his desk.

## III

THE sheriff was riding slowly down the narrow mountain road to the ford over Tug River,—" Jim's Ford " the natives of McDowell had dubbed this crossing far back when the dry ginseng root was a legal tender for all debts public and private southwest, as the crow flies, from the county of Mercer. Whence the name had come, and by reason of what, tradition was silent. No doubt the original Jim had dwelt in this rugged gorge, and by accidental hap had given his name to this rocky ford that lived on and proclaimed him long after the man had passed out into the hands of the Wind.

To the negro miner, seven miles up at the town of Welch, this rugged crossing, studded with great bowlders, was respectfully referred to as " Hell's Gap,"—respectfully, for no

other reason than that the negroes were superstitious, and the mammoth gorge, silent as the grave floor, and deep and foggy except in the long summer afternoons, was calculated to conjure every grim phantom set down in the African catalogue.

The sheriff pulled up his " dun " horse suddenly, and threw his leg over the pommel of his saddle. Just below him in the ford of the river was a man wading out into the water,—a tall mountaineer, bare-headed, his dress indicating a rather equal compromise between the barbarity of the village and the barbarity of the mountain. For upper garment he wore the red-fringed hunting shirt of his fathers and his grandfathers and on; and for nether garment, the blue overalls purchased at the country store for a haunch of venison or a bundle of hides. The mountaineer was tall, rugged, and powerful,—a proper inhabitant for such a place.

" Spitler Hamrick," murmured the sheriff. " By every limping god! The toughest pine knot in the mountains of McDowell. I wonder what the old wolf is looking for."

Then he tightened his knee on the pommel of the saddle and a slow smile crept over the features of the sheriff. "By my troth!" he drawled, "it is certain that Spitler is no Vere de Vere. Still, if blue blood ran to back, and bunches of muscles on the shoulders, Spitler's claim to princely lineage would be unquestioned."

White Carter stopped short, and adjusted his eye-glasses. The mountaineer had gathered up a bundle from the river and was turning to wade ashore. The man did not at once see the sheriff; he was looking down into the water in order to avoid slipping on the smooth stones. When he stepped on to the rocky bank of the river, the sheriff called. At the sound, the mountaineer dropped the bundle and jerked up a Winchester that lay nearby against a bowlder. It was an act after the custom of the mountains. One armed himself first, and observed the "lay of the land" afterwards.

White Carter remained perfectly motionless. "I would n't shoot, Spitler," he drawled, "it 's vulgar."

The mountaineer dropped the butt of his rifle on the stones, and looked up in astonishment. "Smoky hell!" ejaculated the mountaineer, "it air the sheriff. Smoky hell!" The refrain was a nervous idiom with Spilter Hamrick.

White Carter put his hand into the pocket of his coat, took out a pipe, knocked the ashes from the bowl and began to fill it with great deliberation. This act, remaining after the red man had passed, proclaimed a status of dignified truce.

The play of action faded from Hamrick's face, leaving it stolid, heavy, prodigiously indifferent. It was the mountain's stamp on its minion, the silence, and the abominable indifference of the rugged earth ground into the faces of the men who struggle for life on her stony breast.

"Hot," observed the sheriff, crowding the bowl of his pipe and thrusting the tobacco down with his broad thumb.

The mountaineer folded his arms over the muzzle of his rifle and leaned upon it heavily.

"Yas," he responded, "warmish."

It was the full measure of salutation, and the full measure of introduction to all matters, important or unimportant, on the watershed of the Alleghanies. In the mountains no man hurried with his speech. There was time to be fully understood, and time to answer fully; then what one did afterwards, one was not so likely to regret. In the flat lands men are not so wise, perhaps.

The sheriff struck a match on his saddle skirt, lighted his pipe, and puffed a cloud of blue smoke rings out over the placid ears of the "murky dun." Presently he took the pipe stem from between his teeth and looked down at the solitary proprietor of Jim's Ford.

"Spitler," he drawled, "what 's in the bundle?"

"Ye kin look," responded the mountaineer with prodigious unconcern.

The sheriff replaced his pipe and lapsed into silence for a moment. Then he said:

"Where did you find it, Spitler?"

"I reckin ye saw," replied the scion of the house of Hamrick.

The guardian of order looked up at the blue

sky over the top of his nose glasses. Then he looked down. "Spitler,"—he said softly.

The mountaineer interrupted. "Sheriff," he growled, "old Spitler Hamrick don't stand no shammackin' round the bush. Smoky hell! He aint never stood it. Things air goin' to be like this: ye kin mosey down here and git this bundle, air ye kin ride on. But ye can't set on you hoss and jaw. Smoky hell! Ye can't set on you hoss and jaw."

There was no circumlocution, no trick of equivocation, no shadow of obscurity in the speech of the denizen of Hell's Gap. He used words for the purpose of expressing exactly what he believed to be true, and for no other purpose. This the sheriff knew, and others had learned and remembered by certain long glistening scars, covered afterward with the red flannel of their hunting shirts.

White Carter removed his knee from the pommel of his saddle and slipped down to the ground. Here he paused for a moment, knocked the ashes from his pipe and replaced it in his pocket. Then he clambered down the steep bank to the river. The proprietor of

Jim's Ford looked on with mighty indifference. The sheriff took up the bundle without a word, returned to his horse, and unbuckling the " throat latch " of his bridle, strapped the bundle to the horn of his saddle. Then he placed his right foot in the stirrup and turned to the mountaineer.

" Spitler," he drawled, " we found a dead man in Tug the other day. I think this is his coat."

The mountaineer looked up from the muzzle of his Winchester. " Were there lead in him ? " he asked.

The sheriff flung his leg over the saddle and gathered up his bridle from the horse's neck.

" No bullet holes," he answered.

" Then," said the giant Hamrick, " he were not killed in the hills."

## IV

IT was the first Monday of July, and the grand inquisitors of the county of McDowell were in laborious session. It was hot in Welch,—so hot that the sheriff had purchased a linen coat and departed for Atlantic City on a ten-dollar excursion, leaving the deputy, Salathiel Jenkins, to swelter with the grand jury. So hot that J. E. B. Huron, prosecuting attorney by selection of the Commonwealth, resorted to expressions not quite profane but nipping close to the border. So hot that the foreman from Charity Fork made continual odious reference to that historic locality over which Lazarus passed in the bosom of Abraham.

The grand jury was a body mightily out of harmony with its inquisitorial affairs, especially on this sweltering Monday when the mercury

was mounting heavenward. The members of the grand jury had removed their coats, they had unbuttoned their shirts, they had rolled up their sleeves to the limit over their great brown arms. It was hot—this grand jury. But it was jovial and good-natured, sixteen freeholders of the bailiwick turning aside for a day to bolster up the peace and dignity of the State. The characteristic apparel of the farmer, the hunter, and the miner was on this grand jury, but there were no collars; not even the "biled shirt" of notorious report. If one had spoken of a haberdasher or essayed to enumerate his wares in the land south of Tug River, he would have been regarded as a purveyor of "green furrin jabber," or been pitied as a hopeless victim of idiot mutterings.

Thus do men hoot the customs of their fellows when in conflict with their own. One looking at this grand jury as an exhibit would have gone away regretting that the chief fad of Delilah had not been handed down in the county of McDowell, just as the jury would have wondered why the funny little man divided his hair in the middle like a woman and

wore a tight band around his neck and a stiff breastplate of cloth and starch over his ribs, when he could dress like a Christian, and be comfortable.

At two o'clock the sage body had concluded its inquisition, and was resting ponderously while the foreman, Abe Collister, of Charity Fork, was slowly and with infinite pain affixing his signature to the indictments. It was no small labor for one whose fingers were thick and broad and accustomed to implements little slighter in proportion than the handle of an axe or the stock of a Winchester.

The facial contortions of this good freeholder as he strove in a clerical capacity would have won for him applause and fortune and wide repute in the cast of a comedy. It was Fate's way, better than genius could imitate, but no audience to see.

It is the function of bodies of this sort to be severe, and it is their way to be most amiable. The prosecuting attorney, it was maintained, ought to know what he wanted. He was paid to know. It was his business. If he thought it wise to send in witnesses charging one with

a crime, then the charge should be found. This conclusion was a splendid working hypothesis, pregnant with expedition, but not quite in accord with the ideal *jus.*

So the grand jury rested as the afternoon grew apace, while the scripturian from Charity Fork toiled, and the prosecuting attorney went down to his office in order to "see if there was anything else he wanted." It was at this hour of lull, that a nervous little man hurried into the office presided over by the industrious daughter of the house of McFadden, and inquired for Mr. Huron. The red genius replied that he was busy. According to this oracle, young Mr. Huron was always busy. His continual status was one of tireless toil,—as continuous as a mortgage, and as tireless as a gas meter.

Just then the prosecuting attorney came out on his way to the grand jury room. The little man rushed up and demanded an immediate audience. The two returned to the private office and closed the door. Here the little man looked at his watch and announced that things would have to be rushed, and launched

into the subject. He explained with almost breathless rapidity that he was a detective from New York, representing Loomey's Agency. As he talked, he threw back his coat revealing a badge which Mr. Huron did not stop to examine. He said that he had been working on the case of Brown Hirst; that he had finally discovered that Hirst had been murdered, foully murdered by one Robert Gilmore, president of the Octagon Coal Company; that he had the case tightened around Gilmore beyond the remotest shadow of probability; that Gilmore, it seemed, had by some means learned of the damning evidence gathering against him, and was attempting to fly from the country; that he had left Philadelphia disguised as a cattle drover, and would pass through Charleston, West Virginia, at midnight on the Chesapeake and Ohio Railroad, and if he was not then arrested, he would probably escape entirely, or, at the least, subject his trailer to the expense and the tedium of an extradition; hence the detective had hurried to Welch in order to secure an indictment at once and return to Charleston in a position to arrest the

man and hold him under a legal warrant that would be valid and unquestioned.

He explained that he must leave at three o'clock in order to reach the Chesapeake and Ohio Railroad in time, and requested that he be permitted to go at once before the grand-jury, which he had learned was now in session.

The prosecuting attorney listened in astonishment, but he was a man familiar with the startling surprises of criminal investigation, and he set himself to act with the expedition which the matter required. He went at once to the grand jury with the detective, and explained that he had just received information tending to the conclusion that Brown Hirst had been murdered; that the witness with him was John Bartlett, a detective from New York, who had worked up the case and would give full information concerning the facts of the crime. He then added that as Mr. Bartlett would be compelled to leave within the hour, he would return to his office and prepare an indictment for murder. In the meantime the grand jury could determine whether the information was sufficient to sustain the charge,

and, if so, the indictment would be ready and Mr. Bartlett could return to Charleston without unnecessary delay.

Then he withdrew, and the grand jury of McDowell, braced by the gust of sudden sensation, straightway forgot how very warm it was and began to put itself into a state of ponderous bovine expectancy.

The witness Bartlett sat down by the table, took out his watch, looked at it anxiously, then snapped the case and returned it to his pocket.

The foreman put down his pen very carefully, mopped his wet face with a great red cotton cloth, and strove to assume the gravity of his position.

"Your name 's Bartlett, stranger?" said the scripturian, feeling that it was becoming for him to set the wheels of judicial investigation in motion, but not quite certain of the method. "You are a detective man; and I 'low you know all about this here little trouble?"

The latter part of the query was a stock question with the foreman. All day long,

every crime, from homicide to assault and battery, had been dubbed by this arch inquisitor as "this here little trouble." If there was any big trouble south of Tug River, it was not deemed to be within the purlieus of the *lex scripta* or the *lex non scripta* of the county of McDowell.

The detective saw the open opportunity to thrust in his testimony as a narrative, and seized it. He leaned over on the table, assured himself of the attention of the jury, and began to talk.

He told how he had trailed this matter down; how the Octagon Coal Company was financially on the verge of ruin, and it was his theory that Gilmore, as president, had been stealing largely from the company; that Hirst had finally suspected this theft and had summoned Gilmore to McDowell; how the dangerous man had obeyed the summons, had quarrelled with Hirst in the office, finally killed him, and in order to cover the crime had carried the body to the bridge and thrown it over, arranging the evidence to appear like a suicide. He painted in lurid colors the desperate char-

acter of this man Gilmore; he pointed out how fearful of arrest the murderer of Hirst was, at that very hour hurrying westward in order, as he believed, to put himself beyond the reach of the law.

The witness talked on glib and shrewdly, and while he talked, the jury, unfamiliar with the rules of evidence, grew indignant and bitter, and fired with a sense of the gigantic outrage.

Presently the door opened and the prosecuting attorney entered with the indictment.

"Are you ready to vote on the matter, gentlemen?" he asked.

The foreman nodded slowly. "I guess we are, Jeb," he answered.

"Then," responded the prosecuting attorney, "Mr. Bartlett and myself will withdraw."

The witness arose and followed Mr. Huron out of the jury room.

When the door had closed, the chief inquisitor from Charity Fork picked up the indictment, turned it over curiously in his ponderous hand, and then laid it down on the table with the back up. Then he took up his pen and jabbed it down into the ink pot.

" Boys," he observed, cheerily, " the Good Book says, ' None shall escape, no not one.' What about this here one ? "

" I reckon," drawled Uriah Coburn, sage and philosopher, and most venerable member from Injun Run, " I reckon the Good Book air right. I reckon we better flop him."

" Flop " was an accurate idiom in McDowell, and, being translated, meant, " to throw heavily."

To this the grand jury agreed with many and various methods of assent. So the member from Charity Fork took a new grip on his pen, thrust his tongue out of the corner of his mouth, and slowly and with great labor inscribed on the back of the indictment this legend, big with the injured dignity of the Commonwealth: " A True Bill. Abraham Collister, Foreman."

## V

AT high noon on the following day Salathiel Jenkins, chief deputy of the absent Carter, was a voluble factor in McDowell. He explained with many a dash of color just how "me and Bartlett" had taken the fleeing Gilmore from a midnight train and transported him to the jail at Welch, where he now languished. How brave they had been, how expeditious, and how marvellously successful in each of their desperate moves. Salathiel Jenkins was a young person who considered himself of huge importance to the economy of nature,—an opinion with which the world at large failed to concur. The conservative Carter had expressed it all long ago when he remarked with immense gravity that Salathiel Jenkins was not wise. But the deputy's potential was high, and he talked. He explained

that the prisoner had employed legal counsel, with whom he had been in consultation since his arrival in the town. He explained that Mr. Bartlett had advised the prosecuting attorney to force the case to a trial at once in order to avoid an application for bail, and in order to prevent the prisoner from being unduly assisted by any accomplice he might have in the East.

He explained that the evidence against Gilmore was overpowering, that there were witnesses who knew something of the matter, and he had the subpœnas in his pocket.

He explained that John Bartlett was the greatest detective in the Republic, and that the days on earth of Robert Gilmore were growing lamentably short. The self-importance of young Mr. Jenkins gushed and bubbled and expanded until it threatened to bulge his anatomical proportions, and he talked and he talked. He descanted with acrimonious criticism upon the fact that Mr. Huron had asked for time in which to examine the evidence, and that he and the great Bartlett had labored to convince him that the case should be put to

trial at once, and that they had had a lot of trouble, but that it was all right now, and when court convened in the morning the case would be called and pushed, and he gloried in the fact that he and Bartlett had assumed large responsibility for this splendid expedition.

It thus came about that the court-room was so crowded on the following morning that the judge as he came down to his bench had literally to elbow his way through. The details of this morning's procedure demonstrated that while the deputy Jenkins had talked he had been telling the truth. After the docket was called, the prosecuting attorney arose and requested that a jury be empanelled for the trial of the case of the State *vs.* Gilmore.

The judge expressed some surprise at this unusual haste, and intimated that if an objection was urged he would continue the case to a later day of the term. To his surprise, however, counsel for Gilmore replied that he was quite ready for trial.

Whereupon a jury was had and the case ordered to proceed. The opening statement

of the prosecuting attorney was frank. It gave the history of the case as he had heard it from Bartlett, admitting freely that he had been unable to investigate the matter personally, but upon his information he was convinced that the prisoner was guilty.

To this the counsel for Gilmore replied that the State was laboring under a stupendous delusion; that Mr. Gilmore was a gentleman of standing, and that it would quickly appear that there was no cause for subjecting his client to the odium of a criminal prosecution.

The spectators were not a little disgusted with the tame proceedings. They had expected a keen and spirited struggle with the startling thrusts and parries of a bitter legal affair. They had hoped to hear the steel grate, and to see the blades dart forward and bend and fly back, as the champion of the State and its enemy strove for some master vantage. They hoped for the fierce interests and the quick sharp thrills incident to the grim fight of a desperate criminal for his liberty and his life, and they were disgusted.

Their strong pugnacious spirit sympathized

with Gilmore and damned his counsel. In the picturesque speech of an auditor from "Dog Skin," "The lawyer was a quitter."

The case progressed with almost exasperating insipidity.

The prosecuting attorney proceeded with great deliberation, and with the air of one who maintains a thunderbolt in reserve. He proved the death of Brown Hirst by the coroner and others; he introduced the books of the company showing its financial standing; and put in such other matters of unimportant evidence as were easily at hand. To all this the counsel for Gilmore made no objection. To the observer, he was stupidly indifferent.

The prosecuting attorney then placed the detective John Bartlett on the stand. Bartlett explained with great volubility that he was a member of Loomey's Detective Agency; that he had learned of the mysterious death of Brown Hirst, and hoping to obtain the reward offered by Hirst's widow, had gone to her and requested permission to investigate the case. He explained that he had learned that the Octagon Coal Company was in desperate financial

straits; that the president, Robert Gilmore, who resided in the city of Philadelphia, had been in the county of McDowell on the night of Hirst's death, and from these data he had formulated his theory to the effect that Gilmore had been stealing from the company; that this fact had been discovered by Hirst, and that they had come together in McDowell for the purpose of discussing this matter; that there the two men had quarrelled, and the result was that Hirst had been killed and his body thrown into the river, and the evidence of suicide manufactured by Robert Gilmore.

The detective explained further that being advised that Robert Gilmore intended to leave Philadelphia for St. Louis, and fearing that it was an attempt on the part of the president of the Octagon Coal Company to escape from the country, he had hurried to McDowell and secured an indictment.

Upon cross-examination it at once appeared that this detective had no knowledge of any fact whatever, but was merely speaking from certain conclusions which he was pleased to call his theory. The attorney for the defense

moved to strike out the evidence of this witness, which was accordingly done, much to the chagrin of John Bartlett, detective, and Salathiel Jenkins, deputy-in-extraordinary to the sheriff of McDowell.

The prosecuting attorney then proceeded to spring his sensation. He announced to the court that during the night Gilmore had made a confession to Mr. Jenkins, the deputy, and that he desired to have Mr. Jenkins sworn and his testimony introduced. Accordingly the irrepressible Jenkins, by virtue of an oath properly administered, was transformed into a witness for the State of West Virginia.

Before the witness was permitted to launch into his marvellous story of the self-condemnation of Robert Gilmore, the attorney for the defense arose and demanded permission to inquire into the circumstances under which the alleged confession had been obtained. The judge replied that such inquiry was entirely proper, and the attorney for the defense began.

The ways of Providence are without premonition. At the first onslaught of the attorney for Gilmore, the importance of the testimony

of Salathiel Jenkins vanished like a New Year's resolution. Yes, he had gone to the prisoner together with John Bartlett; he had explained that he was the deputy sheriff of the county of McDowell; that he was a person of influence; that the prisoner was in grave peril ; and that, if a full confession were made, he, Jenkins, would induce the authorities of the law to deal leniently with the prisoner. He was a person of importance, he said, and, in the absence of the sheriff, the first guardian of all the law and order in the county of McDowell; if the prisoner would confess, he, Salathiel Jenkins, could save him from the hangman, and he would do it.

These were the conditions under which the alleged confession was made.

At this point in his narrative, the attorney for the prisoner stopped the witness, and objected to the introduction of the confession as having been improperly obtained. The court very promptly sustained the objection, and directed the witness to stand aside.

The prosecuting attorney arose and asked the court to *nolle* the indictment and permit

the case to be dismissed. The judge reminded him that the case was at trial, and that such action could not now be taken; that the request should have been made before a jury was called; it was now too late, since the control of the cause had passed from the hands of the State.

Young Mr. Huron, prosecuting attorney of the county of McDowell, was lost, rudderless, upon an unknown sea. He arose and explained that he had not had an opportunity to investigate the evidence; that he had not spoken with the witnesses; that he had depended upon John Bartlett and the confession made to Salathiel Jenkins in order to convict the prisoner, and that, failing with these, he had no further evidence to introduce.

The court interrupted this speech of explanation, and reminded the attorney that the State could not urge such excuses; that the prisoner, having been put to the hazard of a defense, was entitled to have his cause legally determined; a *nolle prosequi* could not now be entered, and the case must proceed.

To this the young attorney, having recov-

ered his composure, replied that the State had nothing more to offer, and resumed his seat.

The counsel for Gilmore at once moved the court to direct a verdict of not guilty, which was accordingly done and the prisoner discharged.

Mystic, and varied, and without premonition are the ways of Providence. When the negro miner went down into the sunless temples of the earth on this Wednesday of July, Salathiel Jenkins was a person of high estate, crowding mightily the orbit of his employer. And when the negro miner came up at evening, this same Salathiel Jenkins was a crestfallen underling, shrinking like a rotten value. The ordeal was frightful. The pride of young Mr. Jenkins had gone through a process of sublimation most excruciating. And yet how abominably indifferent nature was. The books in the office of the sheriff were the same. The trees, the river, and indeed the entire outside world were quite as large as they had been. Only the importance of the deputy had shrunk, and was shrinking. Master of folly! Would it stop short of microscopic? The vice of his

yesterday loomed clear-cut like the angles of a wall. He had talked, talked. It was the deadliest error. In the name of that notorious Simon of infantile record, was there no God to save the witless from himself ?

The crowd passed out of the court-room, and, sauntering down by the office of the miserable deputy, paused to harpoon him as it drifted by. The weather was fine for scaffold building, it observed. Would the deputy spring the trap in the absence of his chief ? it was interested to know. Could he tie a hangman's knot ? Would he be pleased to have the gracious assistance of his fellows ? And more ingenious proddings, while the weary Jenkins perspired and shrunk, but was silent. This he had learned: like as the great lessons of life by hap learned too late.

And that same night John Bartlett and Robert Gilmore hurrying eastward in a Pullman car on the Chesapeake and Ohio Railroad remarked with large favorable comment that the ancient doctrine of *lex vigilantibus non dormientibus subvenit* was marvellously true in this practical time.

## VI

ON the night of the seventeenth day of July the judge of the criminal court of McDowell walked into the office of the sheriff. He was in no altruistic mood, this jurist. Since his fortunate political affiliations had thrust him into a high estate his dignity sat upon him heavy as a fog. He had been sent for. It was thoughtlessness approaching near to disrespect. When the tall jurist entered, the crowd in the office of White Carter arose.

"Judge," drawled the sheriff, coming forward, "you must pardon the centurion for taking this liberty with the tribune, but we were holding a secret war council, and presently required the fountain of law. I am sure you won't mind, Judge."

The fountain of law flung aside his injured feeling with a wave of his slim hand.

"It is all right, Carter," he observed. "But why the conclave? Good men should be abed."

"'Day unto day uttereth speech,'" drawled the sheriff, "and night unto night showeth knowledge. And just here the hurt lies. The boys have been crowding the day and shirking the night turn."

Then he stepped back by his companions and added: "Young Mr. Huron we will overlook, as familiar in your honor's forum. The other gentleman is Mr. Hartmyer Belfast, in the secret service of the New York life insurance companies."

The judge nodded cordially and sat down by the table. The others also resumed their seats, while the sheriff removed his eye-glasses, placed them carefully on the forefinger of his fat right hand, and began to explain.

"While I was absent, I believe, one Robert Gilmore was indicted here and tried for murder, which trial resulted in a verdict of not guilty, the evidence being insufficient to sustain the charge. It now appears that Gilmore did kill Hirst, and that he can now be con-

victed with the evidence in the possession of Mr. Belfast and myself."

The judge elevated his eyebrows, but volunteered no comment.

The sheriff continued. "At the time of Hirst's death I was not quite certain that it was suicide. The coat and vest found on the bridge did not correspond to the trousers and shoes of the deceased, which were the ordinary rough articles worn by the miners. There was no explanation for such dress on the part of Hirst. Later I found a miner's coat at Jim's Ford which corresponded to the other clothing of Hirst. This coat had been tied in a bundle and thrown into the river above—probably at the bridge. Stitched in the lining was a pocket book belonging to Brown Hirst containing some money and a draft on New York, together with a memorandum of a number of life insurance policies. These matters led me to believe that Hirst had planned to secure the insurance on his life by arranging a counterfeit suicide, but by some means the plan had failed after the evidence had been prepared and he had come to a violent death, probably by the hand of another.

" But the matter was involved in mystery, and I deemed it best to retain my conclusions until further developments should appear. I wrote to the various companies with which Hirst was insured, explaining the facts which I had determined. They replied that the matter was in the hands of Hartmyer Belfast, their secret agent, and that I would be advised when the investigation was complete.

" A few days since the companies wired me that Mr. Belfast might be expected to appear in my county at any time, and yesterday he called upon me."

The sheriff moved a little closer to the table, and the drawl seemed to slip out of his speech.

" It can now be shown that Robert Gilmore came to McDowell for the purpose of assisting Hirst to manufacture evidence of a suicide; that he went with him upon the bridge, and after enticing Hirst to the rail of the bridge, suddenly threw him over into the river. The train men can be produced who saw Gilmore when he arrived and when he departed on the night of the murder. All of this evidence has been carefully prepared. In addition, it can

be shown that immediately after his trial, for some mysterious reason Gilmore went directly to Philadelphia and arranged for a conference with the widow of Brown Hirst. Of this Mr. Belfast had notice, and, by request of Mrs. Hirst, he was present, concealed in an adjoining room. This conference between Gilmore and Mrs. Hirst was remarkable. The man was deeply affected, and said that he had come to tell her the entire history of his villainy, because he loved her, had loved her always, and now knew that he could never have her. Whereupon he explained that Hirst and himself had planned to rob the insurance companies ; that Hirst's marriage to her was part of the scheme, but that he, Gilmore, had grown to love her, and to regret his action in procuring the marriage, and so frightfully had this grown upon him that finally he had killed Hirst.

" He then explained the minute circumstances of the death, adding that he had been tried and acquitted, and would now leave the country, but that something in his bosom would not rest until he had told her the

entire truth. So we have now, I judge, a complete case, together with the confession, which, I am told, will be quite proper evidence, and with such a case there can now be nothing in the way of Gilmore's conviction."

"Nothing at all," observed the judge, dryly, "except the Constitution of the United States of America."

The sheriff sat down suddenly and replaced the eye-glasses on his fat nose.

"You mean," said the prosecuting attorney, "that the prisoner cannot be put twice in jeopardy for the same offense?"

"Unless," responded the judge, "the judicial machinery in McDowell can be held exempt from the Constitution of the State and the Constitution of the Federal Government, a conclusion," he added, with prodigious gravity, "in which I should rather hesitate to concur upon a casual hearing. Having been once properly tried for murder, this man cannot be again tried for the same offense."

"It has been held," said the prosecuting attorney, "that where the first trial was procured by the fraud of the prisoner, the case

did not come within the provisions of the Constitution."

"True," replied the judge, "there is an early case in Virginia, and later cases of record, but the fraud must be gross and apparent. What fraud could be shown here? The indictment was properly found, the trial was regular, no suspicion of conspiracy attaches to the officers of the State, nor can it be shown that even misstatements were made, unless a plain conspiracy can be shown on the part of this detective, John Bartlett." Then he turned to the secret agent of the life insurance companies. "How about this Bartlett?" he asked.

"So far as I can learn," replied the detective, "Bartlett made no false statements. He is a member of Loomey's Agency in New York. It is true that he called on Mrs. Hirst and requested permission to investigate the case. What he stated to the prosecuting attorney as facts were facts. Of course, his theory was wrong, and his deductions incorrect; but for these, I presume, he could not be held responsible. I have investigated the mat-

ter with care, and while it is extremely probable that this trial was shrewdly procured by Gilmore, yet it has been so skilfully handled that no fraudulent proceeding could be shown on the part of Bartlett, although I am quite certain of his villainy.

The sheriff rubbed his hands with the bland unction of a Hebrew at a "fire sale." "Jeb," he drawled, "I guess you 're it. I guess the thing is all over but the shouting."

"Well," responded the prosecutor, "I judge there are others. How about the lamented Jenkins, erstwhile representative of the sheriff of McDowell? Is the young man Absalom safe?"

A faint ripple of merriment spread over the fat face of the sheriff. "Boys," he mused, "it was a keen flim-flam. Let us quietly disperse, and endeavor to live it down." Then he added wearily, "It may be good to be good, but it is safer to be smooth."

The judge arose. "Mr. Gilmore has been tried and acquitted," he observed. "The record is complete. He cannot be held again to answer for this crime, even though he be

pleased to proclaim his guilt from the housetops."

"Then," said the detective, with the dreary deliberation of one retiring from a failing cause, "this murderer cannot be punished."

The dreamy blue eyes of White Carter swam listlessly.

"Perhaps," he drawled, "when the gentleman shall have passed the melancholy flood with that grim ferryman whom poets write of unto the Kingdom of Perpetual Night."

# THE GRAZIER

(See Code of West Virginia, Chap. cxxiv., Sec. 14; Chap. cvi., Sec. 25; also Chap. cxxv. See any good text book on Landlord and Tenant. The case also of Martin Admix *vs.* Smith *et al.*, 25 West Virginia, 579, and cases cited.)

# THE GRAZIER

## I

THE driller of the Bonnie Mag No. 3 had been keeping his weather eye on the public road all the long summer afternoon; exacting and laborious duties had obtained under the shadow of the oil derrick on this nineteenth day of August, quite sufficient to have distracted the attention of the ordinary man, but through it all the driller had maintained his watch. The pumper, a grimy mortal, who regarded the monster oil company as the sole and omnipotent power of the universe, had marked this apparent anxiety of the driller, and inquired, with some trace of humor, if that gentleman was expecting to see grease gush up out of the road. To which the driller had re-

sponded with barbaric profanity that the pumper had been employed to pump, and that he might hold his position by holding his tongue, but not otherwise. A suggestion that banished all levity from the speech of the pumper. Besides, there was a red glint in the eyes of the driller, and the underling of the great oil company appreciated perfectly the full significance of the sign. He had noticed it before on divers eventful occasions, especially on a certain morning when being interrupted by an order of the Circuit Court, the driller had promptly suggested to the deputy sheriff that he might go to the infernal regions with his injunction; and instead of suspending operations until the legal forum could determine the title to the realty, he had complied with his contract by pushing his well through to the Gordon sand.

It was true indeed that the Circuit Court had attached the body of the driller and bringing him up before its august presence fined him two hundred dollars for contempt, but the old man had paid over the money without the hesitation of a moment and immediately there-

after consigned the Circuit Court to the same heated region originally suggested to the deputy sheriff.

The sun had gone down, and the twilight was beginning to gather on the oil field. The shadows darkened across the long sloping valley, and the great derricks in the half light looked dark and gaunt and threatening like some grim engines of war. It was now difficult to observe the highway from the oil wells far up on the hill side, and the driller, who evidently intended to maintain his surveillance of the county thoroughfare at any cost, stepped out from the shadow of the derrick and began to wipe his hands on the grass; when he had finished he turned to the pumper. "Just keep your eye on that cable," he said curtly, "I 'll be back when you see me coming." Then he turned and walked slowly down the path to the road.

The soft breath of wind creeping up from the North through the rift in the low hills brought with it no sound, save the dull ceaseless thump of the engines drawing streams of liquid wealth from a thousand narrow arter-

ies leading down into the bosom of the earth. This great industry, not content with changing the civilization, had changed also the very face of the land; two years before this fluttering summer breeze had carried with it the murmur of ripening corn fields, the sweet odor of quiet pasture land where herds of fattening cattle wandered through fields of blue grass. Now, the lands were marked with wagon roads, studded with the rough shanties of the pumpers and the gigantic wooden tanks of the great oil companies; and here and there, like the twisted ugly back of some huge serpent, a black pipe line stretched its interminable length across the broken country. Greed ruled the world, and beauty, like many another gift of nature, was battered out under his hammer.

The oil driller stopped at the road side and leaned his long body on the rail fence. He was a thin, old man, with sharp, emaciated features; his hair and iron-gray beard were matted with oil, and his long arms, bare to the elbow and burned black by the sun, glistened greasy as the piston of his engine. The ancient work-

man kept his watch in dead silence, and beyond this his face showed no interest. This man belonged to that iron type upon which the world has depended so much for its civilization, that type which no matter where placed toils on in its station like a machine, unquestioning, tireless, reliable as a law. In the rank of their legions it had extended the rule of the Cæsars; on the broad decks of the men-of-war it had widened the dominion of Great Britain; and in the mines and mills and forests of America it had reared and maintained and enriched a Republic; growing greater than them all.

Presently in the deepening twilight a huge shadow appeared at the foot of the long hill, and the driller heard distinctly the sound of a horse coming leisurely up the sandy road. As it approached, the indefinite shadow took on a clear and decided outline, until one in the position of the driller could have seen that it was an enormous man, riding a red roan horse. The man was leaning forward, his head down and his hands resting on the pommel of his saddle, while the bridle reins dangled loose in

his fingers. When they were opposite, the driller spoke.

" Is that you, Alshire ? " he said.

The giant threw back his great shoulders and stopped his horse with a wrench on the bridle reins. " Morg Gaston ! " he announced with some trace of surprise in his voice, then he added, half-apologetically, " what 's the good word with you ? "

The driller climbed heavily over the big staked-and-ridered fence, " I saw you go down this morning," he said, " and I have been watching for you back; I want to tell you something."

Then he came over to the middle of the road and rested his greasy chin on the mane of the red roan.

" Hell of a high horse," said the driller.

" Seventeen hands," responded the giant.

The old man ran his eyes slowly over the immense proportions of the traveller, his deep, powerful chest, his broad, thick shoulders and his massive limbs almost grotesquely huge.

" You are not little yourself," he observed, as though announcing a discovery, " and I am

darned glad of it, leastways I was darned glad of it that morning old Ward's rotten derrick blowed down, and you chanced along and lifted her off me. I was pinned under them timbers like a rat."

The man laughed, but his face in the dark was not merry. The driller extended his close inspection to the horse; when he had finished he stepped back in the road and an expression of intense admiration spread itself over his rugged features.

"By jolly!" he said, "you are a pair to draw to."

The giant patted the withers of the great horse.

"Cardinal is a good colt," he replied, "good as they grow."

The driller stood for some moments gazing almost worshipfully at the pair; then he straightened suddenly and coming up close to the horse rested his arms, wet with petroleum, on the pommel of the saddle.

"Alshire," he said, lowering his voice, "the Company thinks there is grease under your land. I was up to see the manager last night,

and while I was there the engineers came in with the maps, and they all agreed that the head of the pool was about under your farm. You are nigh on to three miles east of the development, but the belt is surely running your way; this here last well that the Company plugged is forty barrels better than the No. 1 five hundred feet west; and I 'll tell you another thing, there ain't no more boring in this region until the Company gets its clutches on all this land laying to the east, yours included. My instructions is to make this last one dry, and move over into Ohio."

The great Alshire bent over and placed his broad hand on the greasy arm of the driller. " I 'm obliged to you, Morg," he said slowly. " I 'll look out."

" By jolly!" continued the old workman, " you better had, they are a smooth set of divels, and whatever you do, keep your mouth plugged. I ain't never given the Company the double cross before, but I could n't see them skin you, by jolly, I could n't!"

The old driller spoke rapidly, as though half ashamed of his treason, and when he had

finished turned and began climbing the high fence.

" Morg," called the giant. " Morg."

" That's all right," answered the driller, as he vanished up the dark hill side, " just keep your mouth plugged; that 's all right."

The giant touched his horse in the flank with his heel and rode on.

Rufus Alshire was a grazier, a business almost exclusively followed in this magnificent grass country. Many years before, his great-grandfather, an English Tory, had fled into this inland country in order to escape certain unpleasant relations with the colonial government. Here he had builded an enormous log manor-house, and surrounding himself with rather worthless retainers, maintained a sort of baronial existence. Others followed, and after a time the country was cleared and came to be divided into great tracts of pasture land, owned by these powerful families. But the elements of the feudal system, although suffering some modifications, remained. The tenants were, for the most part, born and reared on the stock land, and were almost fixtures.

The descendants of this independent ancestry continued to reside as near to the central part of their estate as possible, and maintained huge residences, rough at times and not quite comfortable perhaps, but always enormous. The nature of the country being especially adapted to the fattening of beef cattle, this industry soon came to be the exclusive business of this powerful people. It was a profitable and supremely independent industry, and gave wide play to the baronial instincts of the Anglo-Saxon; who, even after the golden time of his race had gone out so many hundred years, still loved the open sky, and the blue hills, and the monster oak trees, and hated in his heart with a stubborn bitter spirit of rebellion the least shadow of restraint. He was willing to serve God if need be, but while he lived he would not serve men. In stature the descendants of the long dead Saxon were huge specimens of the race, almost as big of limb as the fabled barbarians of Lygia; powerful men, whom close and intimate relations with the mother nature kept strong and immensely vital to the very evening of life. But withal

the hospitality of the Saxon was profligate, his impulses were kindly, and he was quite content to leave the affairs of government and the problems of civilization to other hands, provided the minions of these powers held their feet back from his soil.

The twilight had deepened into night; on the crest of the far-off hills the great oak trees stood outlined against the sky like mighty silent figures waiting for some mystic word that should call them into life.

The rim of the moon was rising slowly from behind the oil field, red like battered brass; the road, covered with shifting light and shadow, stretched across the rolling country like a silver ribbon. The grazier rode slowly, his hands hanging idly at his sides, and his face set with deep thought; from time to time he raised his ponderous right hand and struck it heavily against the tree of his saddle as though to indicate thereby some important decision finally reached, but as often he dropped the hand back to its place.

The important information of the oil driller had added a mighty element to the matters

with which he was evidently concerned. The horse, left to his own inclinations, quickened his pace and presently the shadow of a huge house loomed upon the crest of the hill at the roadside. The horse stopped at the gate, and the man, aroused from his reverie, dismounted slowly, and opening the gate led the horse through; as he closed the gate he stopped for a moment and rested his enormous elbow on the latch. "Well," he said, as though announcing his temporary conclusion to himself, "I 'll ship the cattle to-morrow, and I 'll see Jerry."

## II

FROM the earliest record of events, either sacred or profane, the genus Bos has been associated with the history of the landowner. The Ancient Egyptian saw in him certain traces of divinity, and honored it with proper recognition. The lamented Job, erstwhile poet of calamity, found time amid the recording of his numerous disasters to set down his venerable appreciation of the species; and the pagan Homer, while singing of gods and men, remembered to sing also the virtues of the noble bullock; and the painters, too, from Claude Lorraine to Rosa Bonheur, have deigned to consider the artistic importance of the domesticated kine; treating him first as a necessary adjunct to a landscape, and later as a central figure in the scene. He has had his part, say the records, not infrequently with the

plans of men, virtuous and otherwise. A certain wily barbaric general used him well in a difficult emergency, and the patriarch Jacob used him in a shrewd physiological experiment, which he had probably learned at Padan-aram in his salad days; an experiment that added much to the worldly worth of the good father, but detracted not a little from his fame.

When the sun climbed up from behind the broad eastern hillside on the following morning it looked down upon Rufus Alshire, who, far more expeditious than itself, had already set himself to the affairs of the day; before the dawn he had brought the cattle from their beds in the cool pasture land, weighed them at his scales and turned them out in the road on their journey to the shipping station some ten miles away. The herd strayed leisurely along the highway. The giant Alshire rode through the drove, keeping the bullocks moving slowly; while following the herd barefoot in the dust, was one of his retainers, a half-witted youth, wearing an ancient straw hat, a shirt originally of the material called "hickory," but now patched in variegated colors, and blue cloth

trousers well worn and frayed. As the youth tramped along he sang in a high piping voice one of those simple little songs which the playing children sing, and by way of illustration danced up and down and whipped the dust with a long hickory switch. On his heart was no shadow of the cares of men, and for this reason, perhaps, under his torn shirt was two-thirds of the happiness of the world.

As the herd wandered along under the great oaks that lined the roadway and the rays of the morning sun crept down through the green leaves, making queer mottled spots on the sleek cattle and brilliant shifting patches on the dewy grass, one looking on could easily have come to believe that the world had turned back some several hundred years, and this was a grassy forest glade of merry England, and the herd, cattle of the gruff, gigantic Saxon who rode among them on his huge red horse, scowling under his black brows and cursing by St. Withold and St. Dunstan and the soul of Hengist the evil times of the Conqueror that forced him to drive his herd into the thick forest at daybreak in order to preserve it from

the marauding cut-throats of a Norman baron; and he would have looked close for great stones half-bedded in the moss, lasting monuments to the weird and bloody rites of some stern Druid colony long dead; and then glanced up sharply to see if that patch of thicker green in the deeper woods were not indeed the coat of some gallant outlaw whose bosom was English, and who stood ready with his yew bow and his cloth-yard shaft to join the huge Saxon in his stubborn fight against the bloody followers of Duke William of Normandy; and when the herd had wandered by one would have leaned over in the road to see if there was not a brass collar soldered fast around the neck of the happy cowherd, graven in Saxon letters with this inscription: "Zaak, the son of Jonas, is thrall to Rufus of Alshire."

The cheery sunshine under the clear arch of blue, with its homely noises of awakening life and its cool breath, ladened with the fresh odor wafted from meadows of clover springing up with sweet new blossom after the harvest, all so conducive to careless, joyous existence,

failed utterly to remove any portion of the anxiety from the face of the grazier.

He sat listlessly in his saddle, with his gray eyes half-closed and the muscles of his face drawn down in furrows; the red roan, trained from his colt days, assumed the duties of his master, and moved carefully among the cattle; his equine intelligence appreciating that it was a part of his duty to the indolent master, to see that the drove kept moving slowly, and that no bullock stopped to crop the wet grass by the roadside, or fight with his fellow.

The watches of the night had brought to Rufus Alshire no solution of the matter with which he had struggled so persistently during the evening before. He was acting, it was true, upon his temporary plan, but that seemed but an incident in the main vexatious problem.

The giant was now entirely oblivious of his environment, and deep in his troublous matter he spoke aloud. "If I could only hold the title," he muttered, and then, as if realizing the folly of his hope, he gripped the tree of his saddle with his hand and straightened his mighty foot suddenly in the stirrup. The

leather snapped under the great weight, and the iron stirrup dropped into the road. The red roan stopped short, and the huge Alshire, pronouncing some severe malediction on his ponderous size, dismounted, picked up the stirrup and tied it to the strap. Then he slipped the bridle rein over his arm and, walking along beside the horse, began to examine the herd with the critical eye of an expert, and comment thereon with the artlessness of a child.

"Beef for the British," he said, "and as good beef as John Bull ever put under his ribs. They are broad on the backs and deep in the brisket and heavy in the quarters, and every black calf of them made the beam kick sixteen hundred pounds."

The grazier slapped his horse fondly on the neck. "They 'll please the Jews, won't they, boy?" The red roan pricked up his ears and rubbed his nose against his master's arm, as though this statement was quite in accord with his own private views of the matter. "They will ship well over the sea." The giant laughed. "And by gad! if the rotten ships

hold together the black brutes will get a blamed sight nearer to the Queen than most of the little snobs ambling around in the East."

The herd of Rufus Alshire belonged to that species of beef cattle termed Polled-Angus, native to the lowlands of Scotland; a breed of comparatively recent importation. They were fine bullocks, full, round, and comely in form; hornless, trim of head and neck, and with coats as black as the fabled spirit of midnight. The law of natural selection had finally indicated this breed as best adapted to the conditions of the West Virginia grazier. It was hardy, easily maintained, and endured the rigor of the winter without distress, beside it was quick to mature and gained flesh rapidly, and then, too, the absence of horns rendered it easier to handle and far less dangerous.

The horn, a necessary and powerful weapon in the wild state, was in the state of domestication a useless incumbrance. Hence nature, laboring for the convenience of men, thrust in and produced the Polled-Angus.

The business of the grazier had been progres-

sive. The powerful landowner, who in the autumn purchased his cattle from the stockmen of the interior counties, had ever encouraged the cultivation of the breed. For many years the short-horn Durham had been the great cattle of this inland country. It was an old race; old in England when the Scandinavian and the Dane swarmed over the river Tees. But the breed, though excellent, was rather slow to mature and not adapted to severe winters, and the breeder awakened to the needs of his market and casting about for an animal better adapted to his uses chanced upon the Hereford, first imported by the elder Clay of Kentucky. And the Hereford became the chief bovine of the grazier. He was old, too; old on the north side of the river Wye in the tenth century, and ancient of record, it is said, in the law of Howell the Good; but while a fine beef animal, he preserved one defect, the massive horn. Still he maintained his place, until on a certain autumn morning at a fat cattle show in Chicago, the good wife of a powerful Virginia grazier, on a quest for the ideal bullock, pointed down into the stock ring at the splendid Polled-Angus and said, " There

he is, but he don't look human." And there he was indeed, broad, and shiny black, and hornless as a man's palm—nature's answer to the breeder's dream.

The great tawny sun climbed high in the heavens; the heat of the day settled down over the living earth like an invisible mantle; the crisp freshness of the morning breeze had given place to the monotonous hot air of midday. The dust arose in clouds from under the feet of the herd, and the cattle themselves, warm and vexed with the irksome travel, were restless and difficult to control. The great Alshire and his huge horse moved here and there through the drove, white with dust; while the happy thrall plodded along behind the herd, whistling merrily and turning from time to time to strike some lagging bullock, and shout with childish glee "Go along you fat feller; to-night you will ride on the steam-cars, and to-morrow the British will eat you." And passing a slight inaccuracy in the matter of time, the witless Zaak was entirely correct. To him the steam-cars were marvels from wonderland, and the British was some far-away gigantic monster with a mighty, insatiate maw.

## III

THE young man closed the door to the private writing-room of the club, and coming back to the table drew a chair up beside his companion and sat down.

"Rufus," he said, "how did you get in so deep?"

"Well," responded the grazier, looking down at the floor, "I am an ass, Jerry, just a natural ass. I was all right, doing well and living like a lord, until I endorsed for that lumber company. When it grew shaky, I tried to save myself by borrowing money and holding it up until the panic was over, but I could n't do it, and when the thing failed I had the notes to meet. I did n't want to be sued, so I borrowed the money. It was a big sum, almost as big as I was worth, but I thought that the men from whom I borrowed the money

would not push me, and that probably I could pull through some way. I might have known that the crash would come, but it is natural, I judge, to postpone the evil day."

"Have your creditors instituted legal proceedings?" asked the young man.

"Not yet," replied Alshire. "On Thursday I was at the county seat looking after my taxes, and while there William Farras, who is a local manager for the oil company, took me aside and said that through some business transactions my notes had come into his hands, and added that he hoped that I was in a position to pay them, as he was hard up and would require a considerable sum of money at once. On the way home in the evening I had the conversation with the driller of which I have spoken; and his statement made the scheme as plain as daylight. The company believes that the pool is under my land, and, wishing to secure the property, it has bought up my outstanding notes. The plan is to sue me at once, sell the land, and buy it in."

The giant spoke slowly, the great muscles of his face set, and his eyes hard. He raised his

ponderous clenched hand and brought it slowly down on his knee. "I shipped the cattle," he added, "to prevent their being attached, and I have gone over the whole thing from end to end, and by every devil in hell I don't see any way to stop their game."

Jerry Van Meter arose and went over to the window. He was mightily affected by the hopeless position of his friend, and in his breast his heart was heavy. The condition of things was reversed. From his very babyhood he had gone to the giant with his troubles, and the giant had always found some way out. Now the man had come to him, and he was helpless. He looked at the huge grazier sitting motionless with his face in his hands, and the tears gathered in his eyes. Van Meter knew too much of the world not to know that the man was ruined. Finally he turned to his companion.

"Rufus," he said, "we will walk down to my office and see what can be done."

It was merely a weakling move for delay. In his heart the young man knew that the matter was hopeless.

The two men arose and passed out of the club.

The life of Jerry Van Meter had been crowded with events quite as varied and rapid of incident as that of Sinbad the Sailor. His parents, who resided on a small farm near Rufus Alshire's estate, had died when the child Jerry was quite an infant, and the huge grazier had assumed the guardianship of the youth. Under his direction the boy had been educated, and finally installed as a bank clerk in one of the small towns. But the spirit of adventure was big in the breast of the youthful Jerry, and one morning he closed the ledger carefully and vanished into the Northwest. Here he pulled teeth for an itinerant dentist, drummed for a soap house, and travelled with a circus. But he had a fortunate star, not at all times obscured; and when the boom struck St. Paul, Jerry drifted in, bought far and wide, and carried out with him ten thousand dollars in gold, which he promptly dropped in a bucket-shop in Chicago. A letter to the good genius Alshire brought a check for one hundred dollars and nine pages of advice.

With this money in his pocket, Jerry passed over on to the Pacific coast. Here he mixed drinks in a bar-room, and officiated in the important capacity of night clerk to a restaurant, until his star came up again, and when it did, Jerry chanced on an abandoned claim that netted him seven thousand dollars. He returned to Alshire the one hundred dollars and the well-worn but badly-heeded letter of advice, and set out for the East. In St. Louis he became deeply interested in certain horse races, and ten days later he landed in the Virginias bronzed, bearded, and broke. The giant Alshire laughed at the escapades of this youth until his sides ached, gave him another check and the ancient letter of advice with various amendments, and the restless Mr. Van Meter dropped down into the metropolis of New York. Here his star gave evidences of constancy, and he became an insurance broker and a man of affairs.

The two men walked slowly down the steps of the club and across the busy thoroughfare. As they stepped up on the opposite curb they were startled by a sharp cry, and turning sud-

denly they saw a little man stumble and fall forward in the street directly in front of an approaching mail wagon. The great horses were almost upon him, bearing down in a long sweeping trot. The driver at the moment was not looking, but it was too late for him to prevent the impending accident even if he had been. The giant Alshire ran out into the street, caught the horses and threw his ponderous weight against the iron bits. The heavy Percherons reared and fell back on their haunches, the tongue of the wagon shot forward, grazing the giant's shoulder, and the wheels stopped for a moment almost against the body of the prostrate man. In that moment Van Meter dragged the hapless pedestrian from beneath the belly of the horses. The giant stepped quickly aside, and the horses, plunging forward heavily on the cobble stones, passed on down the street, while the half-dazed driver did not even look back to ascertain what had really occurred.

The little man wiped the dust from his hat with the sleeve of his coat and looked up at his deliverers.

"Well," he said, "Randolph Mason came near to losing his clerk. I guess I stumbled on that infernal rail."

A great light came into the face of Jerry Van Meter. He came up close to the little man and caught him by the shoulder. "Randolph Mason!" he said, "Is Randolph Mason in New York?"

"Yes," responded the little man. "I am his clerk. Parks is my name. Mr. Mason is here, but——" Then he stopped short.

The now excited Van Meter shook the little man almost roughly by the shoulder.

"Good," he cried, "good, we must see him at once."

The clerk Parks looked down at his soiled clothes and the dust on his bruised hands.

"Gentlemen," he said slowly, "it is against the strict order of the physicians, but, under the circumstances, I don't quite see how I am going to refuse."

## IV

RANDOLPH MASON leaned forward and struck his hand heavily on the arm of his chair.

"Forty thousand," he said sharply, "you owe that sum, sir?" His face looked old, sunken, and furrowed with heavy dark lines, but his eyes shone under his shaggy brows.

"Yes," responded the grazier, "fully that much."

"To secure that amount in cash," continued Mason, "it will be necessary to deal with some bank or savings institution of which the president or some powerful director is an attorney-at-law. This condition will be found to obtain in almost any one of the small towns of the country, and if my directions are followed strictly, the plan can be carried out and the money secured in a very few hours. The plan is simple and easy. In the first place——"

"But," said the giant Alshire, "I don't want other men's money. I don't want to commit a crime."

The veins in the forehead of Randolph Mason grew black with anger.

"Commit a crime!" he cried. "No man who has followed my advice has ever committed a crime. Crime is a technical word. It is the law's name for certain acts which it is pleased to define and punish with a penalty. None but fools, dolts, and children commit crimes."

"Well," responded the grazier, "whether the plan you are about to propose is a crime or not, it is certainly a moral wrong, and I have no desire to rob a bank by committing even a moral wrong."

Randolph Mason arose slowly and pointed his finger at the huge Alshire.

"The old story," he sneered, "child afraid of a goblin. Moral wrong! A name used to frighten fools. There is no such thing. The law lays down the only standard by which the acts of the citizen are to be governed. What the law permits is right, else it would prohibit it. What the law prohibits is wrong, because

it punishes it. This is the only lawful measure, the only measure bearing the stamp and the sanction of the State. All others are spurious, counterfeit, and void. The word moral is a pure metaphysical symbol, possessing no more intrinsic virtue than the radical sign."

"I beg your pardon, Mr. Mason," said Van Meter thrusting into the conversation, "but I am quite certain that you mistake the request of my friend. He is not attempting to secure any sum of money. He simply desires to retain the title to his land and prevent its sale, until he can determine the extent of its oil production."

"For what length of time?" asked Mason.

"Well," said the grazier, "I scarcely know. One year might be time enough, or even less than one year; while, on the other hand, it might require several years. You see, if I can prevent the land from being sold, and keep it in my name until the territory is developed, then if oil is found in paying quantities I can meet all these notes, and if the land is dry I am no worse off. At any rate, I want to hold on to the land and see."

"Are there judgments of record against you?" inquired Mason.

"Not yet," replied Alshire, "but Farras is preparing to sue on the notes and rush the sale through. Can I stop him; can I hold the sale off?" There was anxiety in the grazier's voice.

Randolph Mason began to walk to and fro across the room with an unsteady nervous stride.

"Easy," he muttered, "easy as learning to lie." Then he stopped by the table and looked down sharply at the great Alshire.

"Have you two friends," he asked, "non-residents of your State, whom you can trust?"

"Yes," responded the grazier, "Mr. Van Meter here in New York, and Morgan Gaston now in Ohio, they will both stand by me."

"Then," said Mason, "listen to me, and do as I advise, and the sale of your property will be as far distant years from to-day as it seems this afternoon. First make an oil lease for a long term, say thirty years, to your non-resident friend of Ohio, giving him all the oil privileges, but, for your own protection in case

of the death of the lessee, incorporate in the instrument a clause permitting the lessor the right to annul the lease at any time by the payment of a small sum. Have the instrument show also that the entire compensation for the lease has been fully paid in advance. Then make another lease renting all your remaining property rights to your friend Mr. Van Meter of this city. Have this second lease for a similar term and of similar provisions to the first, and the entire compensation for it likewise paid in advance. Then you have but to record the instruments, employ an attorney, and sit down in the shadow of your house. The hair on your head will have thinned vastly before the litigation over your complicated affairs terminates in a final decree of sale."

Rufus Alshire leaned forward listening eagerly. "But won't Farras sue me," he asked, "won't he attack the leases?"

"Certainly," said Mason, "he will at once do one of two things; either he will bring an action at law on the notes, or he will attempt to embrace the whole matter in a chancery suit. If he sues at law, resist and attempt to

fight through the superior courts. When he finally obtains a judgment at law in your State, he will be compelled to resort to a suit in chancery for the purpose of selling the land. In either event he must come finally into a court of chancery and include the holders of these leases as parties defendant to his action. When this is done, the non-resident lessees are not to appear, and he will be able to obtain service on them only by an order of publication. You alone will fight this chancery suit through the lower and superior courts, and just before a sale of the land is ordered by the court of last resort, one of the non-resident lessees must appear, and by virtue of the statutory provision applying to such cases, file his bill of review and open up the whole matter, enjoin the sale, fight the case over again and again through the superior court. When this new litigation finally draws near to a close and the land is again ordered sold, the remaining non-resident must appear, bring his action in the Circuit Court of the United States, enjoin the sale, and proceed with his fight.

" By this time," continued Mason, placing

his bony hand on the giant's shoulder, "there will probably be gray streaks in your beard, and if you wish to run this litigation on into eternity, you will have only to produce some collateral heir."

The huge Alshire looked up at the strange man beside him. "Is all this possible?" he asked in astonishment.

Randolph Mason did not at once answer; he walked stumblingly across the room to his chair and sat down by the table. His form was thin and gaunt, and along the border of his forehead the veins were purple and swollen. After a time he turned toward the powerful grazier, his face ugly with a sneer. "To the law," he said, "all things are possible—even justice."

## V

ONE morning in the early winter the red roan horse, with his head over the high fence of his pasture, saw two men standing in the neighboring meadow contemplating in silence a gigantic derrick. One he immediately recognized as his master Rufus Alshire, and the other resembled in a very large degree a certain obnoxious person who on a memorable summer night had smeared his well-kept mane with most disagreeable petroleum.

Presently the grazier spoke. "I judge that it will not now be necessary for Jerry to invoke the tedium of Federal tribunals, there seems to be grease enough here to pay everything and wind up the lawsuits."

The driller looked up at the oil streaming down from the timbers of the derrick; then he made a mighty angular gesture with his bare right arm.

"By jolly!" he said, "there is money enough in that hole to pay off the national debt."

# THE RULE AGAINST CARPER

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## I

CARPER did not recall that he had ever noticed the ugly details of the court-room before,—the high, soiled ceiling, the rows of benches, worn, broken, empty as a fool's heart, the clerk's desk, and the presumptuous bench of the judge; the long tables, too, for the attorneys, heaped with papers, books, and dusty covers, a farrago of disorder—how ugly they were !

Carper looked up at the judge. The man's black silk robe fell away in sharp straight folds; he sat erect like a bronze cast, his face turned half toward the window in order that he might better read the paper before him. How power had changed this face! Carper remembered idly that, years before, the face of this

man had been sweet, tender, lit with kindness. Now it was as hard as white ivory.

The attorneys at the table were talking in subdued whispers; Carper did not hear; he was wondering vaguely if the long slim fingers of the judge ever ached as his head was aching. The conjecture was unique.

It was difficult for Carper to realize his position. His clothing was certainly better than that of any other man in the court-room. He was quite certain that his face was the same powerful, clean-cut, immobile mask that it had been always. The world did not know, it did not even suspect. If one had asked the clerk yonder for a financial rating on Russell Carper, the clerk would have shrugged his shoulder and written six figures on the margin of his record. Yet this was the end,—the end.

Over by the window stood a prisoner in the custody of the marshal. The man was poor, miserably poor; his clothes were clean, threadbare, ancient as the law. Carper knew the story. The man was a little shopkeeper; his wife was ill,—dying, the deputy said. There were children, too, hungry, naked, absurdly

miserable, and the crime,—some petty revenue infraction. He would be presently required to pay his fine, and, failing that, would be locked up in a cell. It was the law, heartless as an image. Yet Carper wondered listlessly if one from beyond the world's rim on the quest of the good would not take this man, and leave the others, leave all the others—the judge with his blue-veined patriciate face, the clerks with their lank jaws, the attorneys, with their expression of abominable indifference, and himself. Well, the machinery of human justice was awry. Then he wondered at the condition that bred this surmise. How was it possible to reflect so indolently upon the condition of another when his own was perilous. Still, such speculations obtained with men, it is said, in great crises, and at the grave's edge.

Presently the judge laid down his papers and began to speak. Carper heard him as one speaking a long distance away. At first the words seemed indistinct and without meaning; then he caught them full, as one waking suddenly catches and understands the conversation of his fellow.

"Our commissioner's report," the judge was saying, "shows that this receiver has now in his custody three hundred and seventeen thousand dollars belonging to the stockholders of the Massachusetts Iron Company. At a former term of this court an order was entered directing the receiver to distribute this fund in accordance with a previous decree. At that term this order was resisted upon the ground that the decree was not sufficiently explicit; which objection the court, upon consideration, overruled. Later, the payment was sought to be held back upon the ground that this order was improvidently awarded, and a motion made to revoke, which was also overruled. And still later innumerable technical objections have been offered by the attorney for the receiver, all of which this court considers insufficient and trivial."

At this point one of the attorneys for Carper arose. "If your honor please," he said, "we ask to be heard in defense of our client. We think that it can yet be shown that this order should not be enforced." Then he sat down.

The blue veins in the face of the jurist grew

darker. "Gentlemen," he continued, "cannot now be heard. The time of this court has already been much consumed by unprofitable argument. On yesterday the stockholders of the Massachusetts Iron Company applied for a rule, requiring Russell Carper, receiver, to appear and make answer, if any he has, why he should not be attached and punished for contempt in disobeying the orders of this court. The rule I have ordered to issue returnable tomorrow morning at ten o'clock."

The judge handed the paper down to the clerk, and directed the next case to be called. Then he leaned back in his chair with the huge unconcern of one well removed from the grip of his fellows.

It was the end. But to Carper it was all as unreal as the yesterday. He seemed to be out of the scene, and, for that, out of himself, an idle spectator. His attorneys were whispering gravely. They were telling him that the game was now played out. There was nothing more to do. He must direct his banker to pay over the money. Even these hired fighters did not suspect; they presumed the delay was favor-

able to some deal in stocks. The truth—only he, Carper, knew the truth. There was grim humor in the huge deception.

On the way out of the court-room Carper stopped and handed the clerk the only bill in his pockets. It would pay the fine of the shopkeeper. The whole thing was an immensely clever little comedy, and he wanted to see the sunshine come back into the shopkeeper's face.

## II

CARPER had been given the long afternoon to arrange some scheme, to plan some way out, but he allowed it to slip by like any leisure day. His mind was indolent, absurdly indolent. In all the other crises of his life, it had been restless as a blown wave. This day it was sluggish. Realizing the end, it had folded its arms. It was difficult to appreciate that his career was ripped off like a rotten seam. That afternoon his broker had talked confidentially of a certain railroad venture. Men from the West had begged the use of his name in the organization of a trust embracing the copper mines of a State. He had been asked to contribute to a great charity. This night, the last night, in his library there was yet no sign of that ruin which sat by the hearthstone. The fire was warm ; the sur-

roundings were luxurious; the shelves were filled with books; from the walls the stern faces of his forbears looked down, haughty, relentless as their lives had shown. It was difficult to realize that he was an embezzler and a bankrupt, suspended above a vacuous abyss by a line that the to-morrow would cut short.

For five years he had been the receiver of the Massachusetts Iron Company. In those five years he had bought and sold on the street with the abandon of a master. He had used the funds of this company as a workman would use a tool left lying in his shop. He had won great sums, and he had lost until the very earth seemed slipping away beneath him.

Then the slump in the stocks of a great railroad system caught him, and he had put in every dollar of this trust fund and watched it vanish like a vapor. Still, no one knew. Carper's reputation stood on the street flawless, perfect in outline, an empty shell—but no one knew.

When the stockholders of the Massachusetts Iron Company finally demanded a reorganiza-

tion, he had employed the best legal talent and thrust in every delay of the law. The fight had gone on year after year, from court to court. Orders had been entered and dissolved; decrees had been made and reversed; hearings had been granted by superior courts, and rehearings, but the end, long delayed, came finally.

The stockholders had applied for a rule. It was the most summary proceeding known to the law. To-morrow he must pay the money, or go to prison a felon. The end loomed like the ragged outlines of a cliff.

To Carper this end seemed atrociously unjust. He had worked so hard, so hard: the best that was in him; the good days of his life had been given up to this labor. It had been his boyhood dream to be a factor in great affairs,—the bitter labor of his youth, and, in part, the realization of his middle life. He had cut every other thing away with a hand that never once had trembled. It was his right to win, if there was any justice anywhere. But to-morrow was the end. To-morrow the court would strip him naked as a bone.

He had heard many a sleek pastor discourse glibly upon the eternal justice of Providence. Then he believed it cant with a smattering of truth. Now it was entirely clear that it was cant—but false; a pleasant lie like the housewife tale of fairies.

Carper took the cigar from between his teeth and dropped it on the hearth. The game of life was an ugly game. He confessed that he had lost interest in its play. Now that the thought suggested he saw that he had been losing interest all along. It was inertia he had been fighting—the plague of inertia, and for no gain at all. It was a world where, if one sat still, one wasted with monotony; and if one labored, it was only for the purpose of building ships to fly in the air, which, when they were all completed, sat stupidly on the earth or by hap toppled heavily upon the builder, crushing out his heart. He could not understand why men had sometimes said that life was good.

Carper had looked, he believed, into not a few chambers of the temple. The same hooded shape sat in each. If fame was

given, the skull was pretty generally crushed with the crown. If wealth was given, the back was broken with the weight. If love was given,—yes, the heart was usually broken with it,—love!

Carper arose and went over to a cabinet in the wall, unlocked the door and took out a big photograph, which he brought over to the fire. It was the picture of a woman, young, beautiful, quivering with the power of life; the mass of dark hair was caught back from her forehead; the eyes were wide, clear, transparent; the nose was straight as the edges of a die, and the throat round, full, marvellously moulded. In the set of the head there was pride of lineage, and the relentless rigor of purity. It was a fine face looking out from a blameless life, strong, innocent, exacting as a child.

The man placed the picture on the mantelshelf, and sat down by the fire. That day was now seven years gone,—seven years! Yesterday was no farther back. Every detail was clear. The shock had stamped them on the lining of his heart. He had loved this woman as a man loves just one time. He was trusting

his very life to her keeping; he was going to her for everything that woman could give; all of sweet fellowship, all of tender sympathy, all of love. She was the only woman in the world. The expression is a platitude, but the fact was as real to Carper as the green trees and the sunlight. One could no more have convinced this man that other women held some of the charms of life, than one could have convinced him that light was a liquid. His love had gained the power of a religion; it had gone farther—it had gained the majesty of a law.

Then the blow came. Carper had gone to this woman with a case of jewels, the profit of a venture. He remembered how happy she had been; how the light of trustfulness danced in her eyes; how she had carried the jewels to the window in order to see the great rubies change to blood-drops, then she had turned with a playful smile and asked him how he had made so great a sum, and he, like a miserable fool, had blurted out that it was a part of his gains in a deal on the street,—a deal in which he had ruined a little banking

house by seizing the vantage of its ignorant mistake. It was the master blunder.

Carper remembered how the blood faded from this woman's face, leaving it ashen gray; how the dull ache of pain gathered in her eyes; how she had come over to him and dropped the jewels slowly into their case, and, without a word, had gone back and sat down by the window. And he knew that the woman of his love was gone out beyond the reach of his fingers. The leash of his love had slipped off and snapped back in his hands.

He remembered the effect upon himself as something entirely foreign to that which writers attribute to men under similar conditions. There was no benumbing horror; no desire to make any violent demonstration of feeling. There was merely a vague loss of strength, as though the bottom of the fountain of vital force had dropped out, and then he grew sick—physically sick. The material man was hurt first, and collapsed, much as it would have done if shot through the stomach with a shell. He felt none of that exaggerated emotion affected by the play-actor.

It was the commonplace sickness of a frightful physical blow.

When the nausea had passed, he had gone over to her and begged to know what it all meant, although he knew quite as well as she. The woman had looked at him with her wide eyes deadened with pain, and said that she had believed him an honorable man, and had loved him for it, but that now she knew the truth, and she would never be wife to a dishonest man.

He had made his argument then, and it was good. The venture was perfectly legitimate, so recognized and treated by the business men of the land,—nay, more, it was so regarded by the law. These were the standards; there was no other. The customs of business and the law were the rules of right in the market-places. Their wisdom was unquestioned. It was the result of all the experience of the race, the conclusion of wise men, laboring with conditions as they were. Had she a right to say that these standards were wrong? He appealed to her sense of fairness. Was she better able to pass upon the right of this transaction

than all the merchants learned in the customs of trade,—than all the jurists learned in the wisdom of the law? Was she better able?

Carper pointed out that she lived in an atmosphere of purity high above the din of the fight for life; a land of refined right, refined justice, refined honor, magnificent, but not the world. The world had no perfect code; it was no perfect place; it was not intended to be so, else it would have been so made. It was an indifferent place, governed by the inexorable law of the survival of the fittest, wherein men struggled for footing and the comforts of life. One must conform to conditions as they were, or go to the wall. It was folly, it was idiocy, it was madness to do otherwise.

Trade was like nature—pitiless. There was no measure of consideration for the weakling or the fool. The fight was bitter, remorseless, subject to dangerous shifts. If one was caught and broken, the blame was with the sorry scheme of things, and this a Divine Intelligence maintained, and men could not question that Divine Intelligence. This condition of the world might not be purest or happiest, but

it was the condition of the world. It was God's way. Was it wise to call it evil ?

Then he shifted. He bade her remember that she had promised to go through life with him. It was a contract she had no right to break. The position she was taking was a frightful contradiction. She was reprehending the customs of trade, and yet there was not a merchant in the market-place who would repudiate his contract. She was charging the law with failure to appreciate the highest shades of right, and yet she was about to do what the law, even in its grossness, recognized and punished as a wrong. She could not stand upon this ground, and do as she was doing. Even if he had done wrong, was she to punish him by doing wrong also ? The vice of her position cried out. Her promise had been given. It was immutable. It was her affair to know her mind, to determine what she wanted to do. She had known him for years. In those years there had been ample time to investigate, to conclude, to decide. No one had abridged the freedom of her agency. She had finally become a party to this contract. Could

she repudiate it now, like the common rogue in whom principle was wanting ?

He bade her remember the gravity of this contract. It involved her life, his life, mayhap the lives of others. He had been shaping everything to this end. Had she the right to ruthlessly destroy all ? What would she think of one who having contracted to accompany another into an unknown land should suddenly abandon him on the purlieus of the country ? What would she think of one who had contracted to go with another into an unknown sea, and should, when that other had made his ship ready, abandon him at the water's edge ? Was she doing better than these ?

The woman had not answered at all; dark circles had gathered around her eyes, and the full muscles of her throat relaxed and sank.

Then Carper remembered how he had knelt down beside her and taken her hand in his own,—her hand, limp, cold, a dead thing.

Besides, he had gone on, he loved her; she was the only woman in his heart. There could never be another. Day and night, and every day and night, his heart cried for her like a

tortured child! There was nothing else in all the wide world to live for, to strive for. He had grown to associate her with every hope, every emotion, every ambition, of his life. How should he live on without her! What should he do with his empty days! Pride might carry him crippled through a few, but, there was a limit to the endurance of a man, and what then—what of his empty days then?

If he had been doing wrong, God could find some way to punish him outside of her love. Besides, if he was doing wrong, he needed her the more. He needed her to round out his life, to add honor and purity and right. God had sent her to do this work of good. Was she going to refuse merely because the world was not the sort of place which she believed it to be? Master of Life! the world would be abominably empty without her. He would go anywhere she wished; do anything, be anything, she wished. It was not the applause of men that he wanted in this life, nor the multitude of things. It was her hand on his own; her voice in his ears; her image in his heart

forever. He could never get back again to his view-point.

She had loosed the mouth of something in his bosom that clamored for her. It would be content with no other. It would hush for no other. His heart was aching now with the cry. What a place of torture it would be to-morrow, and the next year, and the next.

The tears had rained down this woman's face, but she had shaken her head.

That day was now seven years gone—seven years! Yesterday was no farther back. Well, well! He had been only partly right. The woman's face in his heart he had walled up. The cry for her he had silenced with the opiates of greed. Still they were both there and alive. To-night the wall had slipped away and the anæsthetics were powerless. It was no matter. After all, had she done well? She had lived on, spotless, pure, alone; and he had lived on—to this. Had she done well? That question it was no right of his to answer.

Carper got up from his chair, took the picture from the mantel, broke it across the face and dropped the pieces into the fire. It was

not necessary for the marshal's deputy to speculate about this picture.

Then he went over to the cabinet and took out a pack of letters, old, yellow, tied with a faded ribbon, and, selecting one at random, sat down in his chair to read it through. "Dear Heart," it ran at the beginning, and at the end "I am unutterably lonely, and I love you." Yes, he recalled the circumstances of its writing well. Then he replaced it with the others and laid them all gently on the fire. They should not be pleasant reading for the marshal.

He had come down into the world, with his heart shredded and every shred aching like a nerve, and from that day he had flown the black flag of piracy. Among all the buccaneers of the street, the hand of none had been heavier, and the brain of none had been keener than his own. From that day every man who had passed up a prisoner on to the deck of his galleon, had walked the plank. The muscles of his face grew tense with the thought.

Somewhere in the house a clock struck ten. Carper arose and walked backward and forward

across the room. The spirit of fierce resistance was beginning to awaken. He would not be stripped like a weakling. He would fight, fight—but how? It was hopeless to dream of raising the money. That plan had been discarded long ago. Vain vaporing! There was no way remaining but Brutus's way —the road out into the vastness of eternity was open! The exit was easy. Why should he lag back? Surely he must go later on. For years the world had been a good place to get out of—for seven years.

The man opened a drawer at the bottom of the book-case and took out a weapon—an ancient duelling pistol of his grandfather. He carried the weapon to the table, wiped it carefully, and began to load it. When he had finished, he went over to close the door. On the threshold lay one of the evening papers of the city. Carper picked it up and brought it with him to the light. The headlines caught his attention. It was the story of a great bank defaulter who had gone free by reason of some defect in the law shrewdly pointed out by a lawyer, Randolph Mason.

He remembered the man as a remarkable legal misanthrope. He had heard of him in the Federal courts. Somewhere he had this man's address, jotted down one morning when the administrator of an estate walked out of the Federal court a confessed gigantic thief, but, by this man's counsel, beyond the reach of the law.

Carper looked through one of the files on his table—yes, here was the residence number. The man leaned over and rested his arm on the mantel-shelf. One might not do ill to go; there was time ample. One could come back to the thing of steel later on.

Carper turned suddenly, put on his coat and hat, and passed out into the street, closing the door and locking it carefully behind him. Then he called a cab, gave the number to the driver, and leaned back heavily against the cushion.

## III

"THIS is the place, sir," said the cabman.

Carper stepped out. The house before him was lighted. The door was standing open. The brougham of a surgeon was beside the curb. He walked slowly up the great steps to the door. There was an indescribable something in the air which seemed to presage calamity; there were sounds as of persons hurrying with some desperate matter.

As Carper put up his hand to touch the bell, two men came out into the shadow of the hall.

"It is a bad case of acute mania," one was saying. "I have given him two hypodermics of morphine, and he is still raving like a drunken sailor."

Carper's hand dropped to his side. He turned slowly and passed down the steps into the street. He had not been noticed by the

busy surgeons. At the curb he stopped for a moment and looked up and down the avenue. Well, it was justice. For seven years he had flown the black flag of piracy. Among all the buccaneers of the street, the hand of none had been heavier, and the brain of none had been keener than his own. Every man who had passed up a prisoner on to the deck of his galleon, had walked the plank. It was now his turn. It was justice.

Carper spoke to the cabman. Then he stepped in and closed the door.

The man of last resort was probably gone. There was now no resort but to the steel thing on the table.

THE END.

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